

1 and it hadn't gone in there, didn't you?

2 A Yes. I was looking for a certain name, like
3 Lawson, and it was hidden the way that it was
4 put in there.

5 Q Well, I'm talking about going into your bank
6 account, just deposits into your account. You
7 looked, didn't you?

8 A Yeah, but deposits can be added together. They
9 can be put -- certain names put beside the
10 checks that's not correct. There's a lot of
11 situations.

12 Q Let's do it this way. Turn to page 133 of your
13 deposition. Page 134, line 9.

14 A 134, line 9.

15 Q Yes, sir. My question to you back a year ago:
16 Do you know if Sunshine received any money from
17 Union Planters on this Lawson contract that we
18 see here in Exhibit 2. And wasn't your answer:
19 I know they did not?

20 A At that time that's correct.

21 Q So you're saying your testimony is a year ago
22 was different than what it is now?

23 A Yes. I researched it and found it out.

24 Q Well, let's talk. Let's ask you this next
25 question that I asked you back a year ago after

1 you said I know they did not. Next question:
2 Have you gone back and looked. And what was
3 your answer?

4 A Yes, I looked, but I didn't look in detail.

5 Q You didn't find it, did you?

6 A Well, I wasn't looking for the right
7 information.

8 Q So then you did -- Sunshine did get -- let me
9 find it so that we're all clear about this. I
10 believe this is already in evidence. In fact,
11 I know it is. Page 113 of Exhibit 1. I'm
12 sorry, doesn't quite fit. Pay to the order of
13 Sunshine Camping Center. \$18,216.50. Lawson
14 P-R-O-C, do you see that?

15 A Yes, sir.

16 Q Meaning Lawson proceeds?

17 A Yes, that's what it means.

18 Q That money went into Sunshine's account at
19 CB&T, didn't it?

20 A Scoot the check over so I can see.

21 Q Yes, sir, absolutely.

22 A That's the account number. But as Jon's
23 already testified, he took it out.

24 Q I didn't ask you what he did or didn't do. It
25 went into Sunshine's account at CB&T, didn't

1 it?

2 A I don't know, I didn't deposit it.

3 Q So you can't say?

4 A I can't -- only thing I can say is that is the
5 checking account number.

6 Q Okay. Well, let's talk about the next one.
7 Look on Exhibit 7, page 163. It's in evidence,
8 too. Here we see Sunshine Camping Center,
9 Lawson proceeds, abbreviate P-R-O-C again.
10 \$8,516.06. That's what it's for, right?

11 A Yes.

12 Q That went into Sunshine's account at CB&T,
13 didn't it?

14 A That's the account number. And as Jon has
15 already testified he put it in there, and he
16 took it out without me knowing about it.

17 Q So it did go into your account, didn't it?

18 A According to him it did. Only thing I can
19 testify to that's the account number.

20 Q So you don't know whether it went into there or
21 not, right? Is that what you're telling us
22 now?

23 A I'm telling you that's the account number.

24 Q First you told us that it went in there. Then
25 when we got to your deposition and you told us

1 that it -- you told us a year ago it didn't,
2 and now you're telling us you don't know?

3 A No, sir. I'm telling you a year ago I did not
4 know it. And I would have to look and see
5 exactly what amounts and everything that you're
6 talking about. And if he says it went in
7 there, he took it out, I believe him. I would
8 have to do somemore research to find out.

9 Q Okay. What about the Peters money, that
10 \$47,881? Did that go into the CB&T account?

11 A The one that was supposed to go into
12 Commercial? Yes, it went into CB&T.

13 Q Okay. So you're telling this Court and this
14 jury that there was a \$47,881 deposit in CB&T
15 in your business and that didn't register with
16 you?

17 A Yes, sir, it registered. Jon was putting money
18 into the account for units to be done. I was
19 told by him that his mother was basically going
20 to loan him the money for him to put money into
21 the business and to pay me off for the \$15,000
22 loan. And that's what that was used for, yes,
23 sir.

24 Q Well, you got the bank statement, didn't you?

25 A Yes, sir.

1 Q And that bank statement showed that there was
2 an automatic deposit from Union Planters Bank,
3 didn't it, talking about the CB&T statement
4 when it showed this \$47,881? It showed that
5 there was an automatic deposit from Union
6 Planters Bank. It showed that, didn't it?

7 A That was at the time that we was changing
8 checking accounts, and I did not get that
9 statement. Whether somebody hid it from me or
10 whatever, when I got back after that year ago,
11 I did do and pull the statement, got them to
12 send me a copy. And, yes, it does have Union
13 Planters on it.

14 Q If you looked at that statement back at that
15 time or at any time from July of '03 to January
16 of '04, based on the explanation Mr. Williams
17 gave you and based on what you knew from that
18 where it said Union Planters Bank, you would
19 have known something wasn't right, wouldn't
20 you?

21 A If I would have looked at it. But I had people
22 hired that was doing that stuff, and I didn't
23 always get in detail about what was for what.

24 Q You telling us you just don't pay attention to
25 your business?

1 A No, sir.

2 Q That's why --

3 A Do you know where every check for you write in
4 your business goes to?

5 Q That's why you let a man who you knew had been
6 stealing from you continue to work for you,
7 right?

8 A No, sir, that's not right. He is a friend of
9 mine for I don't know how many years. Our kids
10 played together and everything like that. So,
11 no, I didn't know he was a thief or I didn't
12 know he was stealing from me.

13 Q Well, the reason you let him stay on the
14 business is because he was a friend, right?

15 A I let him stay in the business because he was
16 doing a job and providing money for the
17 business and wanted to buy back into the
18 company at a later time.

19 Q That's what you were concerned about, wasn't
20 it, getting money in this business so you could
21 have some money to go in your pocket; isn't
22 that right?

23 A Do what? No. I was getting money from my
24 family and everybody else to buy units.

25 Q You wanted this business to do well, didn't

1 you?

2 A Everybody wants their business to do well.

3 Q And I agree with you a hundred percent.

4 A But do I want to take stolen money to make it
5 well, no, sir.

6 Q I agree with you a hundred percent. And you
7 knew this man as far as -- you knew this man
8 was doing a good job, making sales and getting
9 contracts written, right?

10 A I knew he was getting good ones done, yes.

11 Q And you wanted to keep him on so he would
12 continue to do that, didn't you?

13 A Of course.

14 Q Even though you found out back in August when
15 you had him sign this note that he had been
16 stealing from the company?

17 A He wasn't stealing. I don't call that
18 stealing.

19 Q Okay.

20 A Getting gas and stuff like this.

21 Q Okay.

22 A I never did catch him stealing money. When I
23 did, I fired him, sir.

24 Q Now, you told us that this \$15,000 loan --
25 can't find the note right now -- was paid off

1 with money that came out of the company, right?
2 You told us that, didn't you?

3 A It was money that came out of the company that
4 his family put into it, yes, sir.

5 Q Wait, wait. I want to make sure that I'm
6 understanding. We've all got to picture this.
7 This is a personal loan on a personal issue
8 that you and he have on this supposed truck,
9 right?

10 A Right.

11 Q And instead of getting -- and you say that he
12 told you -- this is what you say -- that he
13 told you that this 47-odd thousand dollars came
14 from his mother-in-law, correct?

15 A No, sir. I said it came from his mother that
16 was loaning him money to pay me back for my --
17 the truck that he did and to invest into the
18 company. And she was having it wired into CB&T
19 checking account, yes, sir.

20 Q Wait a minute, now. Let's see if we can do the
21 math. 47,881 went into that CB&T account,
22 wasn't it?

23 A If that's what written down there. I'd have to
24 look back at the records.

25 Q Fifteen thousand-odd of it went off -- went to

1 pay you off, right?

2 A Yes, sir.

3 Q So that left -- see, I went to Auburn, I can't
4 do math. Grew up in Phenix City you can't do
5 math either. \$32,881 that was left after his
6 personal loan was paid off, right?

7 A That's what your math comes out to.

8 Q And that money stayed in the company, didn't
9 it?

10 A No, sir.

11 Q Did it pay to Jon Williams?

12 A Excuse me?

13 Q Did that \$32,881 that was left that came from
14 that Peters loan, did that get paid to Jon
15 williams?

16 A Yes, sir.

17 Q So he stole that out of your account, too?

18 A He didn't steal it out of the account. His
19 mother said they wasn't gonna invest at that
20 time. This was so --

21 Q So you're saying the man's mama was in with him
22 in some sort of scheme to take money from your
23 company?

24 A No, sir, I did not say that.

25 Q Let me move on.

1 A I said his mother was gonna use the money to
2 loan him so he could invest in the company so
3 he could build back and get his shares back.

4 Q All right. Let me do this, and we'll finish up
5 with this point. When you found out -- well,
6 let me ask you this. Do you believe Jon
7 Williams did wrong?

8 A Now, yes.

9 Q You believe that he has -- think your lawyer's
10 gonna ask you this, because he's already said
11 something about it. Do you think he's ruined
12 your reputation?

13 A Yes, he has.

14 Q And that of your business?

15 A Yes.

16 Q And you understand the bank is suing your
17 business to get this ninety-something thousand
18 dollars that was paid back; is that right?

19 A Yes.

20 Q And that was done all because of Mr. Williams,
21 correct?

22 A Yes.

23 Q You filed not one lawsuit against Mr. Williams
24 for that, have you?

25 A Correct.

1 Q And you believe it's all Mr. Williams's fault,
2 don't you?

3 A Yes. Mr. Williams has agreed to pay it, too.

4 Q Agreed to pay it to you?

5 A No, pay you, Union Planters. I think that's
6 what he said yesterday.

7 Q I didn't hear that, sir. And I can tell you my
8 folks don't have a dollar yet.

9 A I'm sorry. I thought --

10 Q Of course, you've known for some time -- you've
11 known for some time, haven't you, that the bank
12 wanted this money, correct?

13 A Depends on what some time is.

14 Q Well, let's look at page 20 of Exhibit 1. Do
15 you have it there, sir?

16 A It's about 10, 15 exhibits up here.

17 Q Can I help you, then, please?

18 A No, I think I found it. Just opened already.

19 Q Right. Page 20, please. Did you receive that
20 from Dale York of the bank?

21 A Yes.

22 MR. SMITH: Your Honor, we would
23 offer page 20 of Exhibit 1.

24 THE COURT: It's admitted.

25 (Whereupon, Plaintiff's Exhibit

Number 1, page 20 was marked
for identification and was
admitted into evidence.)

BY MR. SMITH:

Q April 15, 2004, Mr. York sent you this letter
to advise you that Union Planters Bank has not
received our lien perfection on the following
customers financed through your dealership,
correct?

A That's what it states.

Q And there's a number listed including
McAllister, Peters, and Lawson, correct?

A Correct.

Q Now, these other folks, Gladier, Porte, Coleman
and Owens, those were real contracts, weren't
they?

A Yes.

Q There was just some problem with the titling
information, correct?

A I don't know what the problem was.

Q Well, but as far as Gladyer, Port, Coleman and
Owens, that all worked itself out, right?

A Yes.

Q Mr. York goes on to say on April 15, 2004, two
years ago now: We are aware of certain issues

1 with regard to these contracts. Correct?

2 A That's what it says.

3 Q And he further goes on to say: Should these
4 issues not be resolved, the dealership --
5 that's Sunshine, right?

6 A Yes.

7 Q Will be responsible for making Union Planters
8 Bank whole. Correct?

9 A Yes.

10 Q That's what it says. You didn't respond to
11 that, did you?

12 A No, sir.

13 Q Now --

14 A Because I'm not responsible for fraudulent
15 loans.

16 Q We'll get to that. Well, I know you're not
17 responsible for them. Your company is, isn't
18 it?

19 A No. I'm not in the business of doing criminal
20 acts.

21 Q Turn to page 7 of your Exhibit 1, please, and
22 this one is already in evidence. About a month
23 after that date in April you got another letter
24 from Mr. York, didn't you?

25 A Yes.

1 Q As you're aware Union Planters Bank purchased
2 three fraudulent loans from your dealership.
3 You see that?

4 A Yes, sir.

5 Q That is a true statement, isn't it?

6 A I know there's three faulty loans.

7 Q Well, Union Planters Bank bought them from you,
8 didn't they?

9 A Yes, sir. Yes, sir.

10 Q Okay. As per our dealer agreement dated
11 January 26, 2002, we are demanding the payoffs
12 of total \$90,763.54, correct?

13 A That's what it says.

14 Q Please send these payoffs to my attention no
15 later than Monday, June 21, 2004, correct?

16 A That's what it says.

17 Q Did you send the payoffs on these three
18 fraudulent loans Union Planters purchased from
19 your dealership on or before June 2004?

20 A No, sir, because --

21 Q I didn't ask you why, sir. Your lawyer can ask
22 you that. You haven't done it even till today,
23 have you?

24 A I'm not responsible for faulty loans.

25 Q All right. I know you're not but your

1 dealership is.

2 A No, sir, my dealership is not responsible for
3 criminal acts.

4 Q Let's talk, please. Your dealership is not
5 responsible for criminal acts?

6 A That employee does.

7 Q Are you a lawyer?

8 A No, sir.

9 Q Have you ever been a lawyer?

10 A No, sir.

11 Q Do you know what the law is in that regard?

12 A (No response.)

13 Q Do you know what the law is in that regard?

14 A What is it?

15 Q That's based on what your lawyer's told you.

16 MR. SHIRLEY: Object to that. That's
17 improper cross-examination and he knows
18 it.

19 THE COURT: I overrule.

20 BY MR. SMITH:

21 Q That's what your lawyer has told you, isn't it?

22 A I've heard it several times --

23 Q Your lawyer --

24 A -- from several different people.

25 Q Your lawyer is one of them, isn't he? The one

1 that's standing up here defending your company,
2 telling everybody --

3 MR. SHIRLEY: We object, Your Honor.

4 MR. SMITH: Wait a minute.

5 BY MR. SMITH:

6 Q Telling everybody that this is all confusing.

7 MR. SHIRLEY: He's invading the
8 attorney/client privilege with that
9 question and that response.

10 MR. SMITH: I'll withdraw the
11 question, Your Honor. I'll withdraw it.

12 THE COURT: Thank you.

13 BY MR. SMITH:

14 Q Okay. Let's look at the dealer agreement that
15 Mr. York's referring to here. And that's on
16 page 1, 2, and 3 of Exhibit 1. Do you have it
17 there?

18 A Yes, sir.

19 Q I have page 1 on the screen. Let me ask you to
20 look at page 3 of the exhibit. And that's the
21 signature page where Sunshine accepted that --
22 the terms of that agreement, correct?

23 A It says dealer, authorized signature and title.

24 Q I know. That's the third page of that
25 agreement, isn't it?

1 A Yes, that's the third, yes.

2 Q Mr. Williams at that time was president of
3 Sunshine, wasn't he?

4 A Yes, he was.

5 Q And he was authorized to enter into this dealer
6 agreement on behalf of the company, wasn't he?

7 A Not for criminal intent.

8 Q I'm sorry. Was he authorized to enter in --

9 A For good loans he was authorized to sign that
10 document, yes, sir.

11 Q I'm sorry, sir. I'm gonna have to get your
12 deposition out again. Page 61 and 62 of your
13 deposition. Actually on page 60. Start on
14 page 59. And I ask you beginning on page 59,
15 we looked at the first page of the dealer
16 agreement. We looked at the first page of it.
17 I asked you: You were aware that Union
18 Planters was one of the financial institutions
19 that would provide financing to Sunshine
20 customers, didn't you? This is on page 60.

21 A Yes, sir.

22 Q And you knew that Mr. Williams had some contact
23 with Union Planters about providing financing,
24 didn't you?

25 A Yes, sir.

1 Q Question: And on January 26, 2002, was Mr.
2 Williams president of the company?

3 A Yes.

4 Q Question: Did he have the authority to enter
5 into this agreement on behalf of the company.

6 A What do you mean by behalf?

7 Q Question: Well, I mean, a company can only act
8 through its officers and agents, wouldn't that
9 be true?

10 A As far as I know.

11 Q Question: I mean, a human being has got to sign
12 the thing, right?

13 A Right.

14 Q Question: And Sunshine wanted to have some
15 sort of agreement with Union Planters so that
16 Union Planters would provide financing to
17 customers, didn't it?

18 A Correct.

19 Q That was true in January of 2002?

20 A Correct.

21 Q And it was true the rest of 2002?

22 A Correct.

23 Q And in 2003?

24 A Correct.

25 Q And in 2004?

1 A I don't know.

2 Q Line 23. If it was necessary for this
3 recreational vehicle dealer agreement to be
4 signed by a representative of Sunshine, was it
5 all right for Mr. Williams to do that?

6 A Where you reading that from?

7 Q Help you here. Page 60, right there. All
8 right. I'm gonna start over. In any event if
9 it was necessary for this recreational vehicle
10 dealer agreement to be signed by a
11 representative of Sunshine --

12 A Excuse me.

13 Q -- was it all right for Mr. Williams to do
14 that. And your answer?

15 A Page 62 is missing.

16 Q I'll be dog. Hold on a minute, Mr. Borland.
17 Thank you for pointing that out. You can
18 prepare and prepare and you're missing the page
19 that you want. Let me see if this copy has got
20 it. This one has. Let's just swap. Let me
21 read my question one more time. In any event
22 if it was necessary for this recreational
23 vehicle dealer agreement to be signed by a
24 representative of Sunshine, was it all right
25 for Mr. Williams to do that?

1 A Yes. It was as long as he didn't use it for
2 criminal intent or faulty loans. It wasn't in
3 business to steal.

4 Q Well, but you did, though, didn't you?

5 A No, sir, I didn't.

6 Q Let's see. Let's look at this, paragraph 1.
7 It is agreed from time to time Union Planters
8 Bank of Paducah, Kentucky, hereinafter known as
9 the Bank, will purchase contracts from Sunshine
10 Camping Center. That's what it says, isn't it?

11 A That's what it says.

12 Q Two: The dealer -- now, the dealer is Sunshine
13 Camping Center, isn't it?

14 A That's what's written in there.

15 Q The dealer will identify each applicant, right?
16 That's what it says, isn't it?

17 A Yes, that's what it says.

18 Q Goes on to say the dealer -- that's Sunshine,
19 isn't it?

20 A Yes.

21 Q -- shall assume all loss and damage sustained
22 by the bank which results from any false
23 representation contained in the application
24 which the dealer knows to be false when the
25 application is submitted to the bank. Correct?

1 That's what it says, isn't it?

2 A That's what it says.

3 Q Now, Mr. Williams, at the time this was signed,
4 was an officer of the company, wasn't he?

5 A Yes.

6 Q And at the time the Lawson contracts were
7 signed he was the president of the company,
8 wasn't he?

9 A Yes.

10 Q And this says the dealer shall assume all loss
11 and damage sustained by the bank which results
12 from any false representation contained in the
13 application which the dealer, Sunshine, knows
14 to be false when the application is submitted
15 to the bank. That's what it says, isn't it?

16 A Sunshine Camping Center didn't authorize Jon
17 Williams to sign that for faulty loans.

18 Q I beg your pardon, sir. I asked you -- it
19 says, doesn't it, the dealer shall assume all
20 loss and damage sustained by --

21 A That's what the paperwork I get --

22 Q Uh-huh, that's what it says. And that's what
23 Mr. Williams on behalf of Sunshine entered into
24 so Sunshine could have a relationship with the
25 bank, right?

1 A Not for faulty loans. That's what the thing
2 says, but it doesn't --
3 Q Where does it say anything different?
4 A Doesn't say anything about criminal loans up
5 there.
6 Q I know. Does it say that, well, the dealer is
7 excused if they are criminal loans that are
8 done?
9 A No, but he wasn't authorized to sign that to do
10 criminal loans. He wasn't authorized to do it.
11 Q It says any, doesn't it, sir? It says any.
12 A But I did not authorize him. Sunshine Camping
13 Center did not authorize him to sign it under
14 those situations.
15 Q Sir, he was the president of the dadgummed
16 company.
17 A But he still wasn't authorized.
18 Q It says any false representation, doesn't it?
19 A That's what that piece of paper is saying. I'm
20 saying you asked me what I authorized, Sunshine
21 Camping Center authorized.
22 Q Wait. You were only the vice president of the
23 company when the Lawson deals were done,
24 weren't you?
25 A Oh, that's correct. I didn't even sign that

1 document.

2 Q Okay. And then when -- you know, for some
3 reason now, as of April 2, 2003, Mr. Borland is
4 no longer an officer of the company, right?

5 A I didn't say that.

6 Q As of April 2, 2003, was Mr. Borland -- I mean,
7 excuse me, Mr. Williams removed as an officer
8 of the company?

9 A Are you asking me or them?

10 Q No, sir, I'm asking you.

11 A What are you asking? I can't see the paper
12 or --

13 Q Is this a little bit better?

14 A Yes.

15 Q Okay. Good. April 2, 2003, Mr. Williams was
16 no longer an officer of the company?

17 A That's correct.

18 Q But you kept -- and you kept him on, though,
19 didn't you?

20 A Yes, I kept him on.

21 Q And he was working for Sunshine, wasn't he,
22 when the McAllister and the Peters deals were
23 bought by the bank?

24 A Yes.

25 Q And there were false representations contained

1 in the Lawson, McAllister, and Peters
2 contracts, weren't there?

3 A Yes.

4 Q And this agreement says any false
5 representation contained in the application
6 which the dealer knows to be false when the
7 application is submitted to the bank, right?

8 A That's what the agreement says, but he wasn't
9 authorized to sign it under those cases.

10 Q Well, let's talk about who was authorized to
11 assign contracts.

12 A Sign contracts?

13 Q That's right. Let's talk about who was
14 authorized to assign.

15 MR. SMITH: Ms. German, is page 4 of
16 Exhibit 1 in evidence?

17 THE REPORTER: Yes, sir.

18 MR. SMITH: Thank you.

19 A And this book is falling all apart.

20 Q That's okay.

21 A I'm just telling you.

22 Q That's okay. Yeah, that's okay. Thank you,
23 though, for letting us know. Now, this would
24 have been signed sometime in January of 2002,
25 wouldn't it?

1 A That's correct.

2 Q At the time the dealer agreement was signed,
3 right?

4 A I wasn't there when the dealer agreement was
5 signed, so I don't know. But I figured it
6 would be in January, yes.

7 Q And it shows here that there are two people are
8 authorized to assign retail contracts to Union
9 Planters Bank. Says -- that's what it says,
10 isn't it?

11 A That's correct.

12 Q Says one of them is Jon K. Williams.

13 A Yes.

14 Q Correct? That's his signature there, right?

15 A Yes.

16 Q So's another one is Wallace C. Borland, III,
17 right?

18 A Right.

19 Q That's your signature there, right?

20 A Right, to sign contracts.

21 Q Now, here's my question to this jury. At any
22 time after January 2002, did Sunshine tell
23 Union Planters that Jon K. Williams was no
24 longer authorized to assign retail installment
25 sales contract to the bank?

1 A You're asking the jury or me? You said you was
2 asking the jury.

3 Q Sir?

4 A Correct? You asking me or the jury?

5 Q My question is, at any time after January 2002
6 did Sunshine tell Union Planters that Jon K.
7 Williams was no longer authorized to assign
8 contracts?

9 A Yes, sir.

10 Q When?

11 A I don't remember exactly.

12 Q Wasn't it true that you didn't tell them until
13 January of 2004, when Mr. Williams was fired?

14 A I asked for all contracts or anything to be
15 signed to be sent to me, but I did not receive
16 anything.

17 Q Well, let's go back to your deposition. I'm
18 sorry. All right. Here's my question on page
19 63, line 20. Asked you back last year. Are
20 63 -- pages 63 and 64 in that one?

21 A (No response.)

22 Q Are they there?

23 A Yeah, I got 63 and 64.

24 Q All right. Question: Well, my question is, at
25 any time before January of 2004, did Sunshine

1 tell Union Planters that Jon Williams no longer
2 has Sunshine's authority to assign contracts.
3 And tell us what your answer was.

4 A No.

5 Q So you didn't tell them until January 2004 that
6 this man, who had been removed as president,
7 who had been taken off the accounts, who didn't
8 have a share -- a single share of ownership in
9 this company --

10 A Because I didn't know what contracts. That's
11 why I asked for all paperwork to be sent to me.

12 Q Sir, my question was -- and I'm gonna have
13 to --

14 A I understand your question.

15 Q -- read it again. At any time --

16 A No's the answer.

17 Q Thank you.

18 A You're welcome.

19 Q Part of the dealer agreement again, the
20 dealer -- and that's Sunshine, isn't it?

21 A That's what the document states, sir.

22 Q Warrants that all contracts will be valid and
23 enforceable against the purchaser, correct?

24 A That's what it states.

25 Q The dealer will at all times hereafter

1 indemnify and hold harmless the bank. That's
2 what it states, isn't it?

3 A That's what it reads.

4 Q It goes on to say: Including reasonable
5 attorneys fees arising from or connected with
6 claims of misrepresentation or fraud, failure
7 or refusal in handling warranty obligations in
8 connection with the sale or financing of any
9 recreational vehicle under this or any other
10 agreement, correct?

11 A That's what it reads.

12 Q Now, these retail installment contracts that
13 were assigned by Sunshine to Union Planters
14 contain this assignment provision, correct?

15 A I don't know.

16 Q Okay.

17 A I would have to see a contract to see that.

18 Q Well, if Mr. Williams told us that it contained
19 this provision, would you disagree with him?

20 A No, I don't have no ground to.

21 Q All right. Now, you agree with me that these
22 four contracts at issue -- two from Lawson, and
23 two from McAllister -- excuse me, two from
24 Lawson, one from McAllister, and one from
25 Peters -- those are false contracts, aren't

1 they?

2 A Yes.

3 Q There was no way for Union Planters to know
4 that those were false contracts, were there?

5 A I really can't answer that question. I'm not
6 Union Planters. The guidelines specify they
7 should have caught something.

8 Q You just don't know, do you?

9 A No, I don't know that.

10 Q Look at your deposition and make sure that's
11 what you told me last time.

12 MR. SMITH: Your Honor, if I may just
13 have a minute.

14 THE COURT: Yeah.

15 BY MR. SMITH:

16 Q Whose job at Sunshine was it to make sure that
17 contracts were good and enforceable back in
18 2002 and 2003?

19 A Jon Williams.

20 Q As far as Union Planters knew, Jon Williams was
21 authorized by Sunshine to assign contracts up
22 until January 2004, correct?

23 A Yes.

24 Q And you agree that Mr. Williams through his job
25 had access to private information from

1 customers?

2 A You have to tell me more.

3 Q He had access to getting -- well, Mr.
4 McAllister particularly, through his job he was
5 able to get information about Mr. McAllister's
6 birth date, correct?

7 A That was part of his job.

8 Q For his social security number?

9 A (No response.)

10 Q Yes?

11 A To get McAllister, no, he wasn't authorized to
12 get that.

13 Q I'm sorry. McAllister is a customer?

14 A Yes.

15 Q You remember Mr. McAllister came in back in --

16 A So you asked me if a customer came in he was
17 authorized to get information, yes, sir.

18 Q Yeah, so as to get financing so a sale could
19 happen, correct?

20 A That's correct, yes.

21 Q And he could use his job to get that
22 information, correct?

23 A Yes.

24 Q Because he was somebody up until January of '04
25 that was responsible for assigning contracts,

1 correct?

2 A I didn't understand the question, sir.

3 Q Up until January of '04 Mr. McAllister was one
4 of -- excuse me. Up until January of '04 Mr.
5 Williams was one of the people at the company,
6 Sunshine, who could -- who could obtain
7 financing and assign contracts?

8 A Yes, sir. Yes, sir.

9 Q Now, who was Mr. Williams's supervisor at
10 Sunshine?

11 A At what timeframe?

12 Q Well, from the time the company was formed up
13 until April of 2003.

14 A To begin with he had no supervisor.

15 Q Somebody became the supervisor, didn't they?

16 A I had more interest in the company, so, yes,
17 sir.

18 Q After April of '03 you became the supervisor,
19 didn't you?

20 A Yes, sir.

21 Q Did Sunshine provide Mr. Williams with any
22 training regarding his job?

23 A No.

24 Q Did you provide him any training on what he
25 should do as far as obtaining credit for

1 customers?

2 A I relied on him. He's the one that had the
3 knowledge.

4 Q Can we agree that Mr. Williams used his
5 position with Sunshine Camping Center to obtain
6 over \$90,000 from Union Planters?

7 A For faulty loans, yeah.

8 MR. SMITH: I believe those are all
9 the questions I have of this witness, Your
10 Honor.

11 THE COURT: If I could see the
12 attorneys up here just a minute. This is
13 off the record.

14 (Discussion off the record.)

15 THE COURT: Does anybody feel like
16 they need to take a break right now?
17 Okay. We'll go ahead and take a short
18 recess at this time, and I'll excuse the
19 jury to go back to the jury room.

20 (The jury left the courtroom.)

21 (Break in the proceedings.)

22 (The jury entered the
23 courtroom.)

24 CROSS-EXAMINATION

25 BY MR. MATTHEWS:

- 1 Q Mr. Borland, I've just got a couple of
2 questions. Now, when the Peters deal went down
3 and \$47,000 went to your bank account, you
4 testified 15,000 of that went to you; is that
5 correct?
- 6 A Testified that Jon gave me \$15,000 that came
7 out of that account, yes, sir.
- 8 Q Well, the check had to be written by you,
9 didn't it?
- 10 A Yes, sir.
- 11 Q You wrote yourself a check for \$15,000; is that
12 correct?
- 13 A Honestly, I don't remember if it was a check or
14 if it was just withdrawn out of the account or
15 how it was.
- 16 Q The money was in your bank account, right?
- 17 A Yes, sir. Yes, sir. It was in Sunshine
18 Camping Center bank account, yes, sir.
- 19 Q And you're the only one that could get the
20 money out, you or I guess your sister?
- 21 A Yes, yes.
- 22 Q Whoever was doing the books.
- 23 A Yes.
- 24 Q I believe y'all were on the signature cards?
- 25 A Right. Yes, sir.

- 1 Q Yesterday do you recall when the ABI
2 investigator, Mr. J.R. Ward, testified and he
3 was asking about your business with Mr.
4 Williams and y'all owned 50 percent of the
5 stock and that type thing? Do you recall him
6 saying that when Mr. Williams turned over his
7 stock to you, the reason he turned over your
8 stock -- the stock to you is that you told him
9 if he didn't do it you were gonna prosecute
10 him? Do you remember that?
- 11 A No, sir.
- 12 Q You don't remember him saying that?
- 13 A I remember him saying that, but I don't
14 remember telling him that.
- 15 Q Okay. You remember Officer Ward testifying to
16 that, but you didn't tell him that?
- 17 A No, sir.
- 18 Q So he was wrong about that?
- 19 A The stock was transferred because of family's
20 money being put into the company and he could
21 not.
- 22 Q How much money did they put in the company?
- 23 A Probably close to -- over a period of time
24 close to a hundred thousand dollars.
- 25 Q Okay. Do you know --

1 A Wasn't all at one time either so.

2 Q Now, you know ninety-something thousand dollars
3 went into Sunshine's account. You know that to
4 be a fact, don't you?

5 A Now I do, yes.

6 Q Now you do. Can you account for any of the
7 monies other than what Mr. Williams says he
8 took and put in his pocket?

9 A Let me back up because I just said something
10 that wasn't correct. No, not all that money
11 went into Sunshine Camping Center's account.

12 Q Okay. Which of the ninety thousand went in and
13 which didn't go in?

14 A I really -- I know McAllister didn't go in and
15 some of Lawson's didn't go in.

16 Q Okay. So he got that directly?

17 A That's what he testified to.

18 Q Okay. He also testified that some of the
19 Lawson money -- you remember when I wrote this
20 zero to 6,000 on the board?

21 A Uh-huh.

22 Q Some of the Lawson money went in the bank, went
23 into your account, and he doesn't know how much
24 of the money that was leftover stayed in the
25 account.

1 A That's --

2 Q Do you have any judgment as to how much stayed
3 in the account?

4 A I don't think none of it stayed in the account.

5 Q You think that number would be zero?

6 A Yes.

7 Q But you admit 15,000 of it went to your
8 account, went to you?

9 A 15,000 did go to me, yes, sir.

10 Q Okay.

11 MR. MATTHEWS: I believe that's all,
12 Judge.

13 CROSS-EXAMINATION

14 BY MR. SHIRLEY:

15 Q Let me start back, if I may, with you. You
16 remember the beginning of Sunshine Camping
17 company, Inc., that timeframe, correct?

18 A Yes, sir.

19 Q And it was you and Mr. Williams that got
20 started?

21 A Yes, sir.

22 Q And the money that was provided to get started
23 came from where?

24 A Myself.

25 Q Okay. And then that -- yourself would include

1 whom, anybody else?

2 A To get started it was just basically me.

3 Q Okay. And from that point forward you got
4 started, and we've heard the dates and the
5 chronology and that sort of thing, correct?

6 A Correct.

7 Q And then some period of time the even amount of
8 stock holdings was changed, correct?

9 A Correct.

10 Q Pardon me. And when the amount was changed,
11 the first amount of stock holding was changed
12 with five shares?

13 A Correct.

14 Q And tell us approximately when that was.

15 A End of 2002.

16 Q Okay. And so at that point the documents have
17 been introduced in August. At that point there
18 was a change in who was writing the checks?

19 A At that time both of us was.

20 Q Right. And then there was some transition
21 there between the months, the ending months of
22 '02 where everything was getting worked out,
23 right?

24 A Correct.

25 Q Then you come over into in August of '02, was

1 there a financial need for the company?

2 A Yes.

3 Q And what was the financial need?

4 A We needed more money to buy more trailers.

5 Q Okay. And when you say trailers, you're making
6 reference to RV recreation vehicles?

7 A Yes, sir, recreation vehicles.

8 Q And in so doing that did you talk to Mr.
9 Williams about it?

10 A Yes, sir.

11 Q And what did he offer in the way of money?

12 A He could not come up with any money.

13 Q And what, if anything, did you say to him about
14 him having to lower the number of shares he had
15 because of you getting other money?

16 A I told him that my relatives told me that if
17 they was gonna loan me anymore money, then I
18 would have to have the stock in Sunshine
19 Camping Center.

20 Q And that's what happened?

21 A That's what happened.

22 Q And then there was a truck, correct?

23 A That is correct.

24 Q And the truck was what kind -- you've told us
25 about the truck, the color, the size, et

1 cetera?

2 A Right.

3 Q And the money for the truck came from where?

4 A My personal self.

5 Q Okay. Then you come back over into April,
6 April 2003. And a resignation is done, I
7 believe. You remember the --

8 A Yes.

9 Q -- documents that were shown, the documents
10 that were introduced? What was --

11 A Yes.

12 Q -- the reason for that?

13 A Because he was no longer president of the
14 company.

15 Q And what, if any, kind of financial need was in
16 existence at that time?

17 A From him, none.

18 Q Okay. Well, what was it for the corporation?
19 Were y'all needing financing at that time?

20 A Yes, yes.

21 Q Okay. And did you procure that financing from
22 someone?

23 A Yes.

24 Q And what, if anything, did the procurement of
25 that financing in April have to do with getting

1 the rest of the stock?

2 A We needed more money for it.

3 Q Okay. And so at this timeframe you became the
4 sole owner of the shares of stock in Sunshine
5 Camping Center?

6 A That is correct.

7 Q And then the next event that you were involved
8 with Jon Williams about was when you went to
9 CB&T banking?

10 A Yes.

11 Q And this is -- before you went down there what
12 discussion had you had with Jon Williams about
13 someone other than Jon Williams -- what did Jon
14 Williams tell you the person's name was, who
15 that person was, if anyone, that helped provide
16 money for him to buy back into the business?

17 A His mother.

18 Q How did that come about? Did he just stroll in
19 one day and say this has happened? Explain the
20 circumstances surrounding that.

21 A He lost the stock and had to give it up because
22 he didn't have the funds. And more inventory,
23 more funds you have, the more big the business
24 and more sales and more prosper off of it and
25 everything. So he wanted to get money from his

1 mother, is what he told me, to buy back some of
2 his stocks. And that's what I was willing to
3 do for him.

4 Q And when you went to the bank, what was your
5 belief about there being any money that had
6 been wired to the bank? What was your
7 understanding?

8 A What dates?

9 Q Before you went to the bank to get the \$15,000.

10 A Repeat the question.

11 Q Yeah.

12 A I'm sorry.

13 Q Well, you testified that you got \$15,000.

14 A Yes, sir.

15 Q You got it either by a withdrawal, cashier's
16 check, or a check. You just told --

17 A Yes.

18 Q -- Mr. Matthews you didn't remember exactly how
19 that was done.

20 A Right.

21 Q That occasion was sometime in July, July 17,
22 18, something of that nature?

23 A That's correct, yes, sir.

24 Q All right. Well, before you went down there
25 where did you understand the money was coming

1 from?

2 A It was coming from Commercial Bank.

3 Q Okay. From Commercial Bank?

4 A Well, I mean, you're losing me because I think
5 you're talking about the money -- you're gonna
6 have to rephrase the question.

7 Q Let me start over. Let me reference you to the
8 money that Mr. Matthews asked you about.

9 A Okay.

10 Q That money came from what bank?

11 A CB&T.

12 Q Now, before you went to CB&T did you know there
13 was money in the bank?

14 A Yes, sir.

15 Q That's what I'm trying to ask you.

16 A Yes, sir.

17 Q Where did you think that money came from?

18 A Jon's mother.

19 Q And how did you know that?

20 A Jon told me.

21 Q And how did he explain it?

22 A That his mother was going to loan him the money
23 so he could rewest back his shares and get his
24 shares back into the company.

25 Q And the money was gonna go where?

1 A Be wired into CB&T checking account.

2 Q Well, when you went down there, did you know
3 that it wasn't going to be used in Sunshine
4 Camping company? When you went to the bank did
5 you know that?

6 A I knew that the 15,000 was going to come to me
7 because that's what was discussed.

8 Q Okay.

9 A And the other was gonna be used for recreation
10 vehicles.

11 Q And then the other money went where, the other
12 than the \$15,000?

13 A It went back to Jon.

14 Q And what was his reason or what did he tell you
15 that he was taking that money out?

16 A The -- his mother, which was the person that
17 was loaning him the money, changed her mind and
18 not at this time that she was going to invest.
19 Something happened, I think, that night.

20 Q And Defendant's Exhibit A has been introduced
21 into evidence. And as of the date on this
22 document what belief did you have as to how
23 money was to be transferred from Union Planters
24 to the Commercial Bank? What did you think it
25 would occur?

1 A It was as of 5/13/03, it was supposed to be
2 wired into Commercial Bank.

3 Q So if you went to CB&T on or about July 17 or
4 18, you would have thought Union Planters was
5 wire transferring money to Commercial Bank?

6 A That's correct.

7 Q What was the reason for the Commercial Bank
8 change?

9 A I live in Ozark. My wife was the one that was
10 doing most of the deposits and everything. And
11 since she was here in Ozark it was just easier
12 for her to go there to make the deposits. Plus
13 they would -- we was trying to get money
14 loaned, and Commercial Bank wanted to loan us
15 the money --

16 Q Okay.

17 A -- and CB&T wouldn't.

18 Q Now, insofar as -- go back just a moment and
19 let me ask something and then I'll move on.
20 Back in the early part of January, 2002 -- we
21 seen this dealer agreement and the dates -- and
22 up until the time that Jon Williams left the
23 employment of Sunshine Camping, was there ever
24 an occasion for anyone to come from Union
25 Planters or from Regions or anyone to come and

1 have a training session about what to do about
2 completing these documents, how to complete
3 them, what was the impact of it, anything of
4 that nature?

5 A No.

6 Q And at the time that -- I think you've
7 testified to this, and I want to be sure that
8 it's clear. When you started the business, you
9 were not in the financing end of Sunshine
10 Camping?

11 A That's correct.

12 Q Who was?

13 A Jon.

14 Q Okay. And then in August of '02, did it change
15 any? Did you become active?

16 A I started doing some.

17 Q Okay. But you still were not as experienced as
18 you are today?

19 A No, no, no. I was just -- no.

20 Q You were asked questions about several things
21 in your deposition. And one of the things that
22 was asked about you testified something to the
23 effect that you didn't think the Lawson money
24 was received; do you remember that question?

25 A Yes, sir.

1 Q And what were you talking about when you say
2 that? You made a comment that you had checked
3 your records. What records are you talking
4 about?

5 A Well, the bank account information that I had,
6 the books that I had did not have Lawson's name
7 on it. And that's basically what I was looking
8 for was the name.

9 Q So your internal records that would show up
10 with some money didn't have the name of Lawson
11 for you to match it against your bank
12 statement?

13 A That's true.

14 Q That's what you're talking about?

15 A Yes, sir.

16 Q But as the matter progressed and saw some of
17 this documents that we've seen in the trial of
18 this case, were you able to go back and look?

19 A Yes, sir.

20 Q And, for example, when you gave your
21 deposition -- I forget the date but they said
22 it was about a year ago. I remember it,
23 somewhere around --

24 MR. SMITH: May 10. May 10 of last
25 year.

1 BY MR. SHIRLEY:

2 Q At that time you were banking with what
3 company? May 10, 2005, what banking company?

4 A Commercial Bank.

5 Q Okay. And so at that time giving your
6 deposition all the transactions had come in,
7 correct?

8 A Correct.

9 Q And at the time you gave your deposition did
10 you know that a transfer, wire transfer, cash
11 transfer had occurred to CB&T from Union
12 Planters?

13 A No.

14 Q Because on the day of your deposition you
15 believed what you believed the day you got the
16 money?

17 A Right.

18 Q Now, let me ask, in January 2004 you discovered
19 a check had been written on the account. Do
20 you recall which account it was?

21 A CB&T.

22 Q And it had nothing to do with Union Planters
23 did it?

24 A That's correct.

25 Q But it was whose account?

1 A It was Sunshine Camping Center's account.

2 Q And it was a check of substantial money, 25
3 \$27,000, something of that nature?

4 A \$27,000.

5 Q And that's the day that you called the police?

6 A That's correct.

7 Q And the day the police were called, he escorted
8 Mr. Williams off the property?

9 A That is correct.

10 Q And at that day had you known of anything that
11 concerns the claims that are made in this
12 lawsuit?

13 A No.

14 Q Now, the person that you spoke with at Level
15 Plains was whom, what type of officer was he,
16 if you know?

17 A He was the police chief.

18 Q And I believe -- do you remember his name?

19 A I don't.

20 Q Does the name Kenny Jackson refresh --

21 A (Indicated in the affirmative by a nod of the
22 head.)

23 Q And I got that name from listening to Agent
24 Ward yesterday.

25 A Uh-huh.

1 Q And when Agent Ward came to you, had you talked
2 with or turned over anything yourself to Kenny
3 Jackson before Agent Ward came to you?

4 A Yes.

5 Q What?

6 A I don't know what. It was a bunch of
7 paperwork, coupon books that you would make
8 payments to different loans about that was in a
9 briefcase, and items that was in the desk that
10 Jon was using.

11 Q Okay. And when Agent Ward arrived, do you
12 recall when it was that he came to see you?

13 A I -- during the day, yes.

14 Q Do you remember the calendar date?

15 A No, sir.

16 Q Do you know the actual date?

17 A No, sir.

18 Q Do you know -- can you tell us if, in fact, you
19 had transpired with anyone or investigated with
20 anyone or learned anything about the nature or
21 the detail of those documents that were given?

22 A No, sir. It was the next day.

23 Q So the things that he was asking you about, you
24 had not sat down and looked over and --

25 A I didn't know what he was talking about.

1 Q -- and examined or anything of that nature?

2 A Didn't know what he was talking about.

3 Q Okay. Now, the truck -- the truck was a truck
4 that was used by Mr. Williams where?

5 A For his personal use.

6 Q Okay. And during the time that you -- you said
7 you had been friends and you considered Jon
8 Williams a friend; you had testified to that?

9 A Yes, sir.

10 Q And you testified to the number of years that
11 you had known him and been around him?

12 A Yes.

13 Q And did you know and understand whether or not
14 he gambled?

15 A Depends on what you call gambling. I mean, I
16 know that he went down and got lotto tickets.
17 Did I know that somebody come up there and
18 threatened him, no.

19 Q Okay. And until this lawsuit came about and
20 the events around this lawsuit, you had never
21 heard that someone was after him for not paying
22 his gambling debts?

23 A No, sir, not to my knowledge nobody came up.

24 Q Now, I was trying to understand. I can't
25 remember. I believe that Agent Ward used the

1 word "embezzlement." You knew -- words to the
2 effect that you knew Jon had embezzled. Do you
3 remember his testimony?

4 A Some of it.

5 Q Well, let me ask you to assume someone was to
6 ask you about embezzlement of Jon Williams
7 before he was fired. My first question is did
8 you know about any?

9 A No.

10 Q Okay. If, in fact, he had exploited some
11 money, some properties of Sunshine Camping
12 company, what was the approximate value of
13 that?

14 A Very little. I mean, a couple hundred dollars.

15 Q Okay. And what was the nature of it? Describe
16 the type and nature of what it was.

17 A I mean, we sold propane. We would, you know,
18 get grills filled up with propane, you know.
19 And sometimes be in a rush, it would be after
20 working hours. So, you know, we forgot about
21 it. And a company truck or his personal truck
22 when he wanted to use it for personal use. I
23 did the same thing.

24 Q And when you took the \$15,000, however it was
25 given to you there at the CB&T Bank in July of

1 2003, that was to pay you back for the money
2 that you loaned him for the truck?

3 A Yes, sir.

4 Q And the money that you believed on that day was
5 coming from a source unconnected and unrelated
6 to Union Planters?

7 A Yes.

8 Q That's all I have. Thank you.

9 THE COURT: All right.

10 MR. SMITH: I have no redirect, Your
11 Honor.

12 MR. MATTHEWS: I've got one question.

13 THE COURT: All right.

14 RE-CROSS EXAMINATION

15 BY MR. MATTHEWS:

16 Q Now, you say you loaned him \$15,000 at some
17 previous time?

18 A Yeah.

19 Q Where'd it come from?

20 A The monies basically that my kinfolks and my
21 father-in-law, my father, I don't know because
22 I kept all of it from units that we would sell
23 and put back in the business.

24 Q Did you write him a check for it?

25 A I think so. I don't know if I did or if it

1 came from my father-in-law. I would have to --
2 or not my father-in-law, my father. I would
3 have to check and see.

4 Q You're testifying under oath that you gave him
5 \$15,000 at some time prior to signing these
6 notes?

7 A Yes, sir.

8 Q Cash or check?

9 A No, sir. I gave him a check. Now, I don't
10 know if it was one check or it was two checks
11 or the situation, but yes, sir.

12 Q Okay. That's all.

13 MR. SMITH: We have nothing else,
14 Your Honor.

15 THE COURT: Thank you, sir, you may
16 step down.

17 MR. SMITH: We call Rhoda Tomlinson
18 of Community Bank & Trust.

19 RHODA TOMLINSON

20 having been first duly sworn or affirmed, was
21 examined and testified as follows, to-wit:

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q You are Rhoda Tomlinson?

25 A Yes, sir, that's correct.

1 Q And, Ms. Tomlinson, where are you employed?

2 A At Community Bank & Trust of Southeast Alabama.

3 Q That's also known as CB&T?

4 A That's correct.

5 Q And where is that located? Where's the branch
6 that you work located?

7 A In Enterprise.

8 Q How long have you worked for CB&T?

9 A Nineteen years.

10 Q Tell us what you do for CB&T.

11 A Okay. I'm the operations assistant manager.

12 Q Tell us what an operations assistant manager
13 does.

14 A Okay. I help keep the records of CB&T,
15 maintain stuff on microfilm and statements.

16 Q Do you have -- are you the person at CB&T in
17 Enterprise responsible for keeping records
18 relating to signature cards on accounts?

19 A Yes, sir.

20 Q And also on deposits and checks that may be
21 written on accounts?

22 A Yes, sir.

23 Q And you've been in that capacity for how long?

24 A Nineteen years.

25 Q Nineteen years? Okay. You got a subpoena from

1 me to appear here today, didn't you?

2 A Yes, sir.

3 Q And I asked you about an account in that
4 subpoena maintained by Sunshine Camping Center,
5 Incorporated; is that right?

6 A Yes, sir.

7 Q All right. And do you know the account number?

8 A Can I look on here? I don't know it by heart.

9 Q Let me ask you this question. I'm sure that
10 there are a number of accounts that CB&T has?

11 A Yes, sir.

12 Q You can't commit all that stuff to your memory,
13 can you?

14 A No, sir.

15 Q But y'all have records?

16 A Yes, sir.

17 Q And you're the person in charge of those
18 records?

19 A Yes, sir.

20 Q And in the subpoena I sent you did I ask you to
21 go and look at certain records for the account
22 for Sunshine Camping Center, Inc.?

23 A Yes, sir.

24 Q And would that include signature card records?

25 A Yes, sir.

1 Q And would that also include records relating to
2 certain checks that may have been deposited
3 into Sunshine's account?

4 A That's correct.

5 Q All right. Now, did you bring records that
6 reflect that with you today?

7 A Yes, sir, I did.

8 Q And are those records of CB&T?

9 A Yes, sir.

10 Q By looking at those records do you think you
11 can answer my questions about who had signature
12 authority on these accounts at certain times?

13 A Yes, sir.

14 Q And when certain checks were deposited into
15 those accounts?

16 A Yes, sir.

17 Q Okay. If you could take a look at those
18 records and tell us what the account number for
19 Sunshine Camping Center was.

20 A 2524635.

21 Q Okay. Is what I've got up on the screen a
22 signature card for that CB&T accounts 2524635?

23 A Yes, sir.

24 Q And can you tell from looking at that when the
25 account was open?

1 A November 12, 2002.

2 Q Okay. And who would have had the authority to
3 write checks out of that account as of
4 November 12, 2002?

5 A (No response.)

6 Q Can you --

7 A Yes, sir.

8 Q Who is that?

9 A Comber Borland and Barbara Franks.

10 Q Now, this account that shows November 12, 2002,
11 and a signature by Comber Borland and Barbara
12 Franks, if the people who could write checks,
13 who could sign checks on that account was
14 changed, what would be done?

15 A A new signature card would be issued.

16 Q All right. I'm gonna go back in time instead
17 of going forward. Oh, and there's also this
18 stamp here, signature updated. Tell us what
19 that means.

20 A That means it was an updated card. There was a
21 card before that.

22 Q All right. Let me show you this document here.
23 And that's the same account number, isn't it?

24 A Yes, sir.

25 Q And we see that signature updated logo.

1 A Yes, sir.

2 Q Is that yes?

3 A Yes, sir.

4 Q Okay. And when would the signature on this
5 account number have been updated according to
6 this document?

7 A August 5th, 2002.

8 Q Okay. And so according to this document as of
9 August 5th, 2002, who was the only person at
10 Sunshine that could sign checks?

11 A Comber Borland.

12 Q And he was the only person that could sign
13 checks up until this other one in November that
14 we've just looked at prior, correct?

15 A Yes, sir.

16 Q All right. Go back one more. Here's another
17 signature card for that account 2524635. And
18 we don't see that signature updated logo on
19 there, do we?

20 A No, sir, that's the original.

21 Q This is the original when the account was
22 opened?

23 A Yes, sir.

24 Q What's the date the account was opened?

25 A March the 11th, 2002.

1 Q And who as of March the 11th, 2002, could sign
2 checks on this account?

3 A Wallace Comber Borland and Jon K. Williams.

4 Q And that would have been the case up until the
5 screen we looked at just before in August when
6 only Mr. Borland could sign, correct?

7 A Yes, sir.

8 Q All right. Now, I want to ask you about three
9 checks that were deposited into or that I
10 believe were deposited into this account.
11 First is a check dated September 18, 2002,
12 that's -- on the reference line it says Lawson
13 proceeds I think the evidence has shown -- in
14 the amount of \$18,216.50. And my question to
15 you is, on or about September 18, 2002, was a
16 check in the amount of \$18,216.50 put into
17 Sunshine's account at your bank?

18 A Yes, sir. We show that was deposited on
19 September 20th.

20 Q Of what year?

21 A 2002.

22 Q Does it show who the depositor was? Does it
23 show who made the deposit?

24 A Like which person?

25 Q It doesn't show that?

1 A No, sir.

2 Q Fair enough. And based on the documents we
3 just got through looking at the signature card,
4 as of September 18, 2002, the only person who
5 could write checks out of that CB&T account was
6 who?

7 A Mr. Borland.

8 Q Okay. Mr. Borland?

9 A Yes, sir.

10 Q All right. Got a check now that's dated
11 November 14, 2002, Sunshine Camping Center, and
12 again the logo Lawson proceeds. And this one
13 is in the amount of \$8,516.06. According to
14 the records at your bank was a deposit in that
15 amount made on or about November 14, 2002?

16 A Yes, sir. We show November 18, 2002.

17 Q All right. And as of that date was Jon
18 Williams someone who was authorized to sign
19 checks out of that Sunshine Camping Center
20 account?

21 A No, sir.

22 Q Okay. Show you a document marked as
23 Exhibit 10. I will represent to you that this
24 document reflects an electronic transfer from
25 Union Planters Bank to Sunshine Camping Center

1 dated July 16, 2003. Can you see that or am I
2 in your way?

3 A I can see it.

4 Q I'll represent to you it shows the amount of
5 \$45,171.50. And my question is on or about
6 July 16, 2003, was there an electronic transfer
7 into Sunshine's account for the \$45,000 amount?

8 A In our bank on July 17, 2003.

9 Q And would Mr. Williams have had authority to
10 sign any check to take any money of that amount
11 out of the CB&T account on that day?

12 A No, sir.

13 Q Thank you, Ms. Tomlinson.

14 MR. SHIRLEY: I don't have any
15 questions.

16 MR. MATTHEWS: No questions.

17 THE COURT: Thank you, ma'am,
18 appreciate you coming today. You may step
19 down. And may she be excused?

20 MR. SMITH: She may be excused, Your
21 Honor. And may we approach just a minute?

22 (Whereupon, counsel conferred at
23 the Bench out of the hearing of
24 the jury.)

25 THE COURT: Yes, sir.

1 MR. SHIRLEY: We object to any
2 document relating to this attorney's fees
3 or records. We object to it on the
4 grounds that it has not been disclosed to
5 us when we asked for such documentation in
6 interrogatory as well as a request for
7 production. And I submit to the Court
8 that under interrogatory number 17 we
9 asked for any expert opinion or report of
10 any expert, and none was disclosed. In my
11 request for production that was sent, the
12 plaintiff --

13 (Reporter asked for
14 clarification.)

15 MR. SHIRLEY: The plaintiff responded
16 to request production the résumé or
17 curriculum --

18 (Reporter asked for
19 clarification.)

20 MR. SHIRLEY: I'll say it any expert
21 that intends to testify. And then under
22 documentation 25, I asked for --
23 documentation request 25 I asked for any
24 exhibit that would be introduced into
25 evidence. And the reply was they'd be

1 produced in accordance with Alabama Rules
2 of Civil Procedure or scheduling order of
3 this Court.

4 Now, the rules of procedure, Rule 26
5 requires a different kind of disclosure
6 and it's typical with a witness. I would
7 concede there is no scheduling order. But
8 rule -- the Alabama Rules of Discovery
9 require when you ask for information and
10 documentation about an expert that that's
11 a different requirement. There's also a
12 supplementary requirement under the rules
13 that require it to be supplemented. And
14 at this juncture there has never been any
15 production.

16 I'd like to further explain to the
17 Court that -- I take it that he's gonna
18 testify he's a licensed lawyer, licensed
19 lawyer, and that he has done this work,
20 and that he thinks this work is necessary.
21 But he's gonna have to testify that it's
22 reasonable. And that requires expert
23 competence and requires an expert opinion.
24 Then he's gonna have a list that shows --
25 a very lengthy list of documentation that

1 identifies works that's been done that my
2 client has not ever seen or had the
3 opportunity to inspect, nor the
4 opportunity to impeach or to designate as
5 previously offered but now excluded from
6 evidence the nature of all the
7 transactions.

8 I submit to the Court and state for
9 the record that it seems very unfair for
10 this defendant to have to be placed upon
11 the burden of cross-examining counsel for
12 the plaintiff about his own bill when it's
13 never been produced but it has, in fact,
14 been seen -- has been asked for. And I
15 don't think that the rules of procedure or
16 discovery have been followed. And under
17 the present circumstances it patently and
18 unfairly prejudices my client.

19 For example, I would have the right
20 to depose him if I wanted to, and I didn't
21 have that right. He didn't tell me it was
22 gonna be him. He didn't tell me it was
23 gonna be anybody that was gonna come in
24 here and approve attorneys fees as
25 attorney. Furthermore, he didn't tell me

1 that it was gonna be predicated upon a
2 document that he has prepared relating to
3 his work activities in this case for me to
4 have the opportunity to refute it if I so
5 want to refute it. He takes unfair
6 advantage of this defendant, and we
7 respectfully and wholeheartedly submit
8 that he should not be able to do it.

9 MR. SMITH: I have no response, Your
10 Honor. We believe -- other than we
11 believe it's proper given the
12 circumstances to allow someone to testify
13 to these attorneys fees.

14 THE COURT: Your objection is so
15 noted and overruled.

16 MR. SHIRLEY: And let me ask this.

17 (Reporter asked for
18 clarification.)

19 MR. SHIRLEY: I do not remember if
20 you file discovery in the clerk file in
21 Ozark. I don't believe you do.

22 MR. SMITH: I can't recall.

23 MR. SHIRLEY: So my question is I
24 need to preserve the record of these
25 interrogatories and these responses unless

1 y'all stipulate that that's what was done
2 and that is --

3 MR. SMITH: The document on the --
4 (Reporter asked for
5 clarification.)

6 MR. SMITH: Exhibit 15 has not been
7 produced to Mr. Shirley until Monday. I
8 believe it was produced Monday. I was
9 not --

10 MR. SHIRLEY: Negative.

11 MR. SMITH: Which date did we use it,
12 Monday or Tuesday?

13 MR. SHIRLEY: Tuesday.

14 MR. SMITH: Okay, Tuesday. Thank
15 you, Mr. Shirley. That was first.
16 Second, no, I have not been disclosed, nor
17 have we disclosed any expert witness
18 regarding testimony. We did not realize
19 that this would be an issue and, were, in
20 fact, surprised when there was an
21 objection raised by defense counsel to
22 Mr. York's testimony regarding the
23 attorneys fees issue. And that's why we
24 believe that it's proper to call someone
25 who may otherwise be an expert but has not

1 previously -- but has not been previously
2 disclosed, is a surprise.

3 MR. SHIRLEY: And I offer to make a
4 copy of the interrogatory 16 and request
5 for production 25 for the record because
6 this discovery is not in the clerk file,
7 and that was the point that I was making.

8 THE COURT: Right.

9 MR. SHIRLEY: That's what I intend to
10 do.

11 THE COURT: Okay. That will be
12 admitted.

13 MR. SHIRLEY: And that will be
14 admitted?

15 THE COURT: Yeah.

16 MR. SMITH: Not to go back to the
17 jury?

18 THE COURT: No, just as an exhibit to
19 the record.

20 (Whereupon, Defendant Sunshine's
21 Exhibits O and P were marked
22 for identification.)

23 MR. KNIGHT: Regions calls John
24 Smith.

25 JOHN SMITH

1 having been first duly sworn or affirmed, was
2 examined and testified as follows, to-wit:

3 DIRECT EXAMINATION

4 BY MR. KNIGHT:

5 Q You are John Smith, correct?

6 A That's correct.

7 Q Mr. Smith, do you know why you're testifying?

8 A Yes. I'm here to testify regarding attorneys
9 fees that my firm has billed Regions Bank
10 and/or its predecessor Union Planters in and
11 about the prosecution of this lawsuit against
12 Sunshine Camping Center and Jon Williams.

13 Q You're obviously an attorney?

14 A Yes, I have been since September of 1992,
15 admitted to the Alabama Bar.

16 Q Your firm was hired to defend or to prosecute
17 this case on behalf of Regions Bank; is that
18 correct?

19 A That's correct. Its predecessor, Union
20 Planters, hired us. And then Regions, its
21 successor, continued on with the lawsuit,
22 that's correct.

23 Q Your firm charged certain fees and expenses to
24 Regions in the prosecution of this case; is
25 that correct?

1 A That's correct, for attorneys fees and related
2 work.

3 Q Show you an exhibit, it's marked Exhibit 15.
4 You know what that document is?

5 A Yes, sir. This is a document that was produced
6 at my request to demonstrate the fees and
7 expenses that my firm had billed for the work
8 that I and others had done in prosecuting this
9 lawsuit.

10 Q Okay. And based on that document what were the
11 fees and expenses that your firm charged?

12 A According to this --

13 MR. SHIRLEY: Restate in full my
14 objection for the record.

15 THE COURT: So noted. Overruled.

16 A According to the document, and it's a document
17 that I'm familiar with, it's \$46,979.47. There
18 was an additional \$141 that was billed but had
19 not yet been recorded on the document that has
20 been added. So \$46,979.47.

21 MR. KNIGHT: Okay. Your Honor, we
22 offer Exhibit 15.

23 THE COURT: It'll be admitted.

24 (Whereupon, Plaintiff's Exhibit
25 Number 15 was admitted into

evidence.)

CROSS-EXAMINATION

BY MR. SHIRLEY:

Q You know that on behalf of Sunshine Camping company, Inc., the defendant in this --

A Wait, I'm sorry --

MR. KNIGHT: Your Honor.

THE COURT: Yeah.

MR. KNIGHT: I'm not sure -- we took this up earlier. I think it's on the record previously. I'm not sure what Mr. Shirley is doing.

MR. SHIRLEY: He's up here for fair game.

THE COURT: Well, I'm not sure they're through with their examination. You want to make an objection to the offer of this document?

MR. SHIRLEY: Sure, sure. I'm sorry. I thought you said thank you. I'm sorry. My apologies.

THE COURT: Okay.

MR. SHIRLEY: But, yeah, I'll go ahead if you want me to. But I don't mind establishing on the record that that

1 document -- may I voir dire to when that
2 document was produced?

3 MR. KNIGHT: Your Honor, we were up
4 here ten minutes establishing -- putting
5 stuff on the record. I don't know what --
6 anything additional that he wants to put
7 on there.

8 MR. SHIRLEY: There's plenty of
9 things that's gonna be additional.

10 THE COURT: I'm gonna deny your
11 request for voir dire. You can just
12 address it on cross-examination. Now, the
13 document has been offered into evidence,
14 is there any objection?

15 MR. SHIRLEY: Yes, sir, and restate
16 all my same objection.

17 THE COURT: All right.

18 MR. SHIRLEY: Also, and we would add
19 that there's no predicate. That he hasn't
20 predicated the accuracy of that.

21 THE COURT: Okay. I'm going to
22 overrule your objections. It will be
23 admitted.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. KNIGHT:

1 Q Now, to arrive at this figure you just told us,
2 what did your firm do?

3 A Well, to arrive at that there was certain work
4 that was performed, that I performed and that
5 you performed, in prosecuting this lawsuit,
6 including gathering documents, reviewing
7 documents, taking the depositions of witnesses,
8 traveling to take the depositions of witnesses,
9 talking -- sending out subpoenas, talking to
10 witnesses, coming down and trying this case.
11 Everything that was necessary to prosecute this
12 case. In my opinion, as someone with my
13 experience, everything that goes into this
14 \$46,000 figure, all the work, in my opinion,
15 was necessary to bring the case to this point
16 to this trial before the jury.

17 Q And you charge by the hour; is that correct?

18 A Yes, that's correct.

19 Q Okay. And what's the hourly rate for your work
20 and my work?

21 A For the work that I have done in this the
22 hourly rate was \$270 an hour. For your work it
23 was \$160 an hour. And given my 14 years of
24 experience practicing in the courts of Alabama,
25 I believe that is a reasonable hourly rate for

1 the types of work performed.

2 Q And this is based on your knowledge and your
3 experience. How long have you been practicing?

4 A Fourteen years. And I've tried cases all over
5 the southern half of Alabama.

6 Q And where have you practiced?

7 A As I said, in southern -- anywhere from
8 Birmingham south in the federal and state
9 courts.

10 Q Currently practicing in the city of Montgomery,
11 Alabama?

12 A That's correct. That's where my office is
13 located.

14 Q Nothing further.

15 CROSS-EXAMINATION

16 BY MR. SHIRLEY:

17 Q You answered discovery requests that I filed on
18 behalf of Sunshine Camping company in this
19 case, did you not?

20 A I prepared some responses that my client
21 executed, yes, sir.

22 Q The request for production, it was requested
23 that any résumé or vitae of expert that was
24 going to testify in this trial be produced, and
25 you haven't done that, have you?

1 A I'm competent that that's --

2 MR. KNIGHT: Your Honor --

3 A -- what your request sought.

4 Q Right. But you didn't produce that to me, did
5 you?

6 MR. KNIGHT: I'm gonna object to
7 this. It's outside the scope of what
8 Mr. Shirley can cross-examine him on.
9 This is something related to discovery
10 which we took up for 15 minutes up here a
11 few minutes ago. I don't see what this
12 has to do with the reasonableness and
13 necessity of attorneys fees.

14 THE COURT: I'm going to overrule
15 your objection.

16 MR. SHIRLEY: Thank you, Judge.

17 BY MR. SHIRLEY:

18 Q And you did not produce your résumé to me, did
19 you?

20 A No, sir, because I didn't realize until this
21 morning that it would be necessary for me to
22 testify.

23 Q And the reason you realized this morning was
24 the previous attempt to introduce this document
25 through the testimony of Mr. York was

1 reconsidered and sustained, wasn't it?

2 A That's correct, yes, sir.

3 Q Right. Well, you've told us this isn't your
4 first case?

5 A No, sir.

6 Q And you know there are competent ways of having
7 an attorney expert present to go down this and
8 do it without you having to do it, don't you?

9 A Yes, sir, I'm familiar with that.

10 Q And you didn't rely on Mr. York as being a
11 lawyer, did you?

12 A No, sir. I believe Mr. York was a competent
13 witness to testify to that, but you were able
14 to elicit some testimony from him that
15 apparently changed the Court's mind.

16 Q Yeah. Your listing -- you didn't prepare this
17 document, document 15, did you?

18 A No, sir, I did not.

19 Q You're not the custodian, are you?

20 A No, sir. My secretary prepared that at my
21 request based on documents kept in my office.

22 Q But you can't authenticate that she did it
23 correctly, can you?

24 A Yes, sir, I believe she did.

25 Q But the belief and knowing is two different

1 things, isn't it?

2 A No, sir, I don't think so, not in this
3 instance.

4 Q Your choice was to say believe, wasn't it?

5 A That's what I said, yes, sir.

6 Q Yeah. You have not done any investigation that
7 you can testify to under oath that you have
8 identified each and every thing that's listed
9 on these three pages as being done in this,
10 have you?

11 A Yes, sir, I can.

12 Q Okay. And it was your choice to decide what
13 work would be done at \$160 an hour or at \$275
14 an hour, correct?

15 A No, sir, not 275, 270. But, yes, the answer to
16 your question is yes. I made that decision.

17 Q So if, in fact, you had wanted to, you could
18 billed out less. You could have let your
19 associate do some of the things you were doing,
20 right?

21 A Depending on how difficult or how involved the
22 work was, yes, sir, that's correct. You
23 understand how that works.

24 Q Yeah, I really do understand how that works.
25 As a matter of fact, you're not gonna try to

1 testify under oath that the same type of
2 competent, efficient legal work could not be
3 done by someone other than you for a
4 substantially less price, are you?

5 A I don't know, sir. I know what I did and what
6 was necessary in my belief.

7 Q You're testifying under oath you don't know
8 that a local lawyer would charge less and do
9 the same thing that you two have done? Is that
10 what you're testifying to?

11 A No, sir, that's not what I'm saying.

12 Q So there are reasonably competent attorneys
13 with more experience and more knowledge in this
14 county that could have done work for
15 substantially less than this bill, isn't it?

16 A I don't know whether there are any other
17 attorneys that could or could not do this work
18 in this county. I can't answer that question.

19 Q You ever associate attorneys in this county?

20 A In Dale County? I -- yes, I've done that in
21 the past, not with my --

22 Q And they don't charge you \$270 an hour, do
23 they?

24 A As I was going to say, not with my current
25 firm. In the past when I've engaged local

1 attorneys in Dale County, we've had a different
2 fee arrangement than an hourly rate.

3 Q You decided what you would do, you decided what
4 was gonna be charged. You don't consider
5 yourself biased and prejudiced in this case?

6 A Sir, all I'm testifying to --

7 Q I didn't ask that. Do you consider yourself to
8 be a biased and prejudiced witness?

9 MR. KNIGHT: Mr. Shirley, let him
10 answer the question.

11 THE COURT: Okay. I overrule your
12 objection. Just answer the question.

13 A What I'm saying, Mr. Shirley, is that I
14 believe --

15 Q Excuse me, that is not what I asked you. This
16 is cross-examination and you know it.

17 MR. KNIGHT: Your Honor, he doesn't
18 know what he's about to say. He's cutting
19 him off three words into --

20 MR. SHIRLEY: That's right.

21 THE COURT: Okay. I overrule
22 your objection --

23 MR. SHIRLEY: Because it can be a
24 negative --

25 (Both attorneys and witness were

1 speaking at the same time.)

2 THE COURT: Hold it just a minute.

3 Now, I'm overruling your objection. Ask
4 your question whether or not he believes
5 he's biased or prejudiced, and you answer
6 the question, please.

7 BY MR. SHIRLEY:

8 Q Do you consider yourself a biased and
9 prejudiced witness in this case, sir?

10 A Under the facts that I'm testifying to about
11 this bill, no, sir, I do not.

12 Q Well, it is an opinion, isn't it?

13 A It is my opinion, correct.

14 Q And I'm entitled to an opinion, am I not?

15 A Absolutely.

16 Q And the jury is entitled to an opinion, aren't
17 they?

18 A Absolutely.

19 Q And they can all -- all three of us can make a
20 different decision, can't we?

21 A I would agree with that, yes, sir.

22 Q Now, did you make any effort to contact someone
23 in Dale County that would charge less, to make
24 this bill less?

25 A No, sir, I didn't do that.

1 Q Well, how can it be said to be reasonable?

2 A Because that's my opinion that it is.

3 Q And that's just an opinion, then, isn't it?

4 A Yes, sir, it is.

5 Q And I have an opinion it's not reasonable and
6 my opinion is all right, isn't it?

7 A You can have your opinion. We're all entitled
8 to that, Mr. Shirley.

9 Q Thank you. That's all I've got.

10 MR. MATTHEWS: I don't have any
11 questions.

12 THE COURT: Ladies and gentlemen,
13 before we leave this subject I want to
14 instruct you regarding the testimony of
15 the witness yesterday, Mr. York. I
16 originally allowed his testimony regarding
17 the reasonableness of the attorneys fees
18 that had been charged. After
19 cross-examination and hearing his
20 testimony at that time the Court has
21 decided to exclude that testimony, and I'm
22 going to direct that you not consider
23 Mr. York's testimony as to the
24 reasonableness of these attorneys fees.
25 Thank you.

1 MR. SMITH: Thank you, Your Honor.
2 Your Honor, subject to confirming that all
3 of the exhibits that have been referred to
4 and have been admitted are, in fact, in
5 evidence, Regions rests.

6 THE COURT: Okay. Ladies and
7 gentlemen, there'll be some legal matters
8 that we'll need to take up at this time
9 outside of your presence and hearing, so
10 I'm going to excuse you to go back to the
11 jury room while we conduct this business.

12 (The jury left the courtroom.)

13 THE COURT: Okay. At this time I
14 will entertain any motions sought to be
15 heard.

16 MR. SHIRLEY: Yes, sir, I do have
17 a -- thank you.

18 (Pause in the Proceedings.)

19 THE COURT: All right, Mr. Shirley.

20 MR. SHIRLEY: Your Honor, I think you
21 got the grasp of this case. And what I
22 tried to do was to assert as a matter of
23 law the grounds by paragraph that under
24 the totality of the facts and application
25 with the law we have witnesses for Union

1 Planters/Regions, co-defendant Mr.
2 Williams acknowledging this was a theft;
3 that they would not -- they had no
4 evidence to say it was within the scope
5 arising out of the employment, and
6 admitted that -- Mr. York admitted that if
7 he was working and did this, it wouldn't
8 be in his job. And he had no facts to
9 suggest that what Mr. Williams did was
10 anything but the same thing, theft,
11 stealing, a criminal act. And that's, you
12 know, primarily the paragraphs that
13 address that issue as the ground for the
14 arising out of that would support any kind
15 of cause of action for the tort of
16 negligence or wantonness or any other
17 matter relating to a relationship that
18 would be a fraudulent, torturous,
19 fraudulent, negligent, wantonness,
20 negligent type of activity. We would
21 respectfully state and submit that the
22 record is devoid of any evidence that
23 would suggest there's any kind of
24 negligent supervision, which is one of the
25 counts.

1 And we would also submit to the Court
2 that a cause of action as set forth in
3 number 4 that relates to trover and
4 conversion is insufficient to be
5 maintained because primarily and generally
6 money is not subject to trover and
7 conversion as a matter of law.

8 Secondly, the only time that it can
9 be -- and I use this as an example because
10 this is not the only type of money that
11 could be trover or conversion applicable
12 or exist, but I think of it like this.
13 Somebody has \$500 in gold coins, and they
14 are to be kept together. And it is
15 collected and identified and set aside,
16 and you take that it would be trover. But
17 the cases are replete that when the money
18 is to be commingled -- and there never was
19 any kind of misunderstanding or confusion
20 about it was going to be commingled and it
21 was going to be commingled in the deposits
22 of a bank Sunshine Camping company -- as a
23 matter of law there is no trover or
24 conversion.

25 And, you know, I think they speak for

1 themselves and they demonstrate to you --
2 the wording demonstrates to you matched
3 against the law and the evidence under the
4 negligence causes of action about
5 incompetence.

6 The evidence also demonstrated a
7 entrustment cause of action. And as a
8 matter of record for the record we
9 submit -- entrustment, we respectfully
10 submit to the Court it's not a recognized
11 cause of action on the end. You've gotta
12 have somebody that is entrusted with
13 something that is known to cause damage or
14 injury, like a shotgun, like a automobile,
15 like a automobile that's driven by someone
16 that's known to be an alcoholic having 10
17 or 12 DUI's. An entrustment cause of
18 action does not exist under the facts of
19 the law of this case.

20 We submit that there's no proof that
21 any activity that was authorized by the
22 plaintiff committed by Jon Williams that's
23 sued upon by the plaintiff under ground
24 number 15. I specifically address that
25 case to Your Honor because although it

1 doesn't concern a case involving a bank
2 and a recreational dealer, what it does
3 concern is where they tried to say that
4 something was in the scope of the
5 employment of an employee involving sexual
6 harassment, which matches up very
7 significantly to this. But they had no
8 proof before the acts were done that there
9 was any knowledge or notice -- any
10 knowledge or notice to the corporate
11 organization that this had occurred. And
12 in view of that, Mr. Williams said that he
13 acknowledged it was a scheme. He
14 acknowledged he sent all the documents up
15 there to them. He acknowledged that he
16 took the money, but that no one with
17 Sunshine Camping company knew anything
18 about it. An agent, a servant or employee
19 can't be giving notice to a corporation
20 when the foundation of their misconduct is
21 contrary to the interest of the
22 corporation or the principal that is
23 charged with the responsibility of the
24 employee. That is not notice by law to
25 the corporation.

1 I think Your Honor knows from
2 previous discussions the multiissues that
3 are alleged against the defendant Sunshine
4 Camping. And as a matter of law I would
5 respectfully submit to the Court that
6 conspiracy can't occur. Conspiracy can't
7 occur if you're alleging that the
8 conspirators are the people or person
9 that's the agent or employee and his
10 corporate principal because it's been said
11 time and again in here, you know, a
12 corporation can only act by its people
13 that are authorized. And a conspiracy,
14 the only evidence of any conspiracy would
15 be with Jon Williams doing what he did
16 with a entity called Sunshine Camping
17 company. And as a matter of law you can't
18 have conspiracy under those terms.

19 THE COURT: Does that conclude your
20 argument?

21 MR. SHIRLEY: Yes, sir, I think so.
22 And I could -- I think I may have skipped
23 over one, but I think you've read what I
24 said about the buy-sell agreement.

25 THE COURT: Yeah.

1 MR. SHIRLEY: And I submit on that
2 written reply or position.

3 MR. KNIGHT: Your Honor, I think very
4 clearly this motion is due to be denied.
5 I guess the foundation of Mr. Shirley's
6 argument is that Jon Williams was outside
7 the line and scope of his employment. But
8 the evidence was very clear that Jon
9 Williams always had authority to assign
10 financing contracts. In fact, for a long
11 time Jon Williams was the sole person that
12 had the authority to assign financing
13 contracts to Regions. There were numerous
14 times that he did that. We saw some of
15 them were fraudulent, but he used that
16 position and that authority to submit
17 those contracts that were fraudulent to
18 get the money from Regions.

19 Mr. Shirley also speaks of its
20 criminal acts. There's two ways to defeat
21 the criminal acts, foreseeability
22 ratification. The evidence was clear from
23 Mr. Williams. He said, I was caught; I
24 was caught taking \$15,000 from the
25 company. Agent Ward also said that's what

1 Comber Borland told him. Comber Borland
2 admitted he took money from the company.
3 He says there's a dispute as to the amount
4 of the money. He says it was a little
5 bit, but that's really irrelevant. He was
6 caught taking money from the company. It
7 was foreseeable that he would do it again.
8 It was foreseeable that he would take
9 money from other people.

10 There's also ratification. All the
11 money that Regions paid in this case went
12 into the account -- or most of the money
13 went into the account of Sunshine Camping
14 Center. Mr. Borland denies having
15 knowledge, but this case is against
16 Sunshine Camping Center. That money
17 coming to the account of the company
18 ratifies Mr. Williams's acts of fraud.

19 As to Mr. Shirley's argument on the
20 conversion claims, there's identifiable
21 sums of money. We showed, we put the
22 checks up there. We showed the checks.
23 Each one of them going into the -- going
24 to Sunshine Camping Center. So they're
25 very clearly identifiable sums. That's

1 what you need for a conversion count.

2 As to the conspiracy, Mr. Shirley is
3 right to a certain extent if --

4 MR. SHIRLEY: Well, thank you.

5 MR. KNIGHT: You're welcome. You
6 can't have the conspiracy between the
7 corporation and the officer. However, if
8 the jury determines, as Mr. Shirley wants
9 them to, they're outside the line and
10 scope of the employment, then there can be
11 a conspiracy in this case between Mr.
12 Borland and -- excuse me, the company and
13 Mr. Williams, if he is acting outside the
14 line and scope of his employment. We
15 don't think he was, but the jury
16 determines that then our conspiracy count
17 is entitled to go to the jury.

18 I see the entrustment count, we'll
19 concede that. We've done some research,
20 and I think there we'll concede that the
21 conver -- I mean, the entrustment count
22 should -- the motion should be granted in
23 that regard. I believe that's all the --

24 THE COURT: Tell me again under what
25 circumstances the jury could find a

1 conspiracy.

2 MR. KNIGHT: It's my understanding
3 that if Mr. Williams is found to be acting
4 outside the line and scope of his
5 employment, then the role that Mr. Shirley
6 cited about the company and the officer
7 doesn't kick in. In that case Mr.
8 Williams will be opened up to conspire
9 with whomever, Mr. Borland or the company.

10 THE COURT: So a corporation could be
11 a partner in a conspiracy as long as it's
12 not with an officer of the corporation?

13 MR. KNIGHT: That's my understanding.

14 THE COURT: Okay.

15 MR. SHIRLEY: I would just
16 respectfully -- I'm sorry, I didn't mean
17 to interrupt.

18 MR. KNIGHT: No.

19 MR. SHIRLEY: I thought you were. If
20 I may start at the end of the complaint
21 and just make a few quick comments because
22 I do feel strongly about our position.
23 Wrongful entrustment is now out. And then
24 the next issue is wrongful hiring,
25 training, and/or supervision. And my

1 point here is -- that's count 8. Count 9
2 is wrongful entrustment and I guess they
3 are withdrawing that.

4 MR. KNIGHT: We certainly are not.
5 That's a very good count. It's entitled
6 to go to the jury. Evidence again, Mr.
7 Borland knew that Jon Williams had taken
8 money from the company. Mr. Williams says
9 it's \$15,000. Agent Ward said Comber
10 Borland told him that he was embezzling
11 from the company. Comber Borland told us
12 that he was taking money from the company;
13 says, Well, it wasn't that much.

14 MR. SMITH: You mean Jon Williams?

15 MR. KNIGHT: No. Comber Borland told
16 us he was taking -- that Jon Williams was
17 taking money from the company; says, Well,
18 it wasn't that much. Doesn't matter. The
19 fact is he knew he was taking money,
20 unauthorized. There's that testimony from
21 numerous people. That count is clearly
22 entitled to go to the jury.

23 MR. SHIRLEY: There is no testimony
24 it was being done at any time beforehand.
25 The earliest opportunity that anybody

1 could suggest what he is suggesting would
2 have to be sometime in February 2004.
3 That's the first time there's any conflict
4 in the evidence as to when someone would
5 have known.

6 There has been -- the term
7 "embezzlement" is not self-defining. The
8 term "embezzlement" does not automatically
9 by substantial evidence bring in Union
10 Planters or Regions. And the evidence is
11 that he said it was embezzlement. He
12 never mentioned an amount. He never
13 mentioned any circumstances. He never
14 mentioned any affirmative acts or anything
15 of that nature.

16 And Mr. Borland took the stand. And
17 on the proof that was offered in the
18 plaintiff's case, it is unrefuted that it
19 had nothing to do with these transactions
20 and that it was explained to where there
21 is no conflict in the evidence. Ward's
22 testimony didn't make a conflict in what
23 the testimony of Mr. Borland was. Ward
24 didn't make any conflict in the admission
25 clearly that I took all the money and I

1 never told Comber Borland about it.

2 MR. KNIGHT: That's not the
3 testimony.

4 MR. SHIRLEY: It did not conflict
5 with Mr. --

6 THE COURT: York?

7 MR. SHIRLEY: Yes. His testimony
8 that they on behalf of the plaintiffs
9 didn't know anything. So, you know,
10 wrongful entrustment, entrustment, what
11 did he entrust? Where is the proof that
12 i.e., for example, they gave him a
13 shotgun?

14 THE COURT: Well, now, that's out.

15 MR. KNIGHT: That's out.

16 MR. SHIRLEY: That's not what --

17 MR. KNIGHT: And the reason why that
18 is 'cause there has to be a chattel
19 involved in that. This is --

20 MR. SHIRLEY: I'm sorry, I apologize.

21 MR. KNIGHT: That's okay.

22 MR. SHIRLEY: That's what I thought I
23 said. But let me go --

24 MR. KNIGHT: Well --

25 MR. SHIRLEY: Let me agree.

1 MR. KNIGHT: Okay.

2 MR. SHIRLEY: Now, we know that
3 number 9 is out. We've agreed on that.

4 MR. KNIGHT: Is that wrongful
5 entrustment?

6 MR. SHIRLEY: That's right.

7 MR. KNIGHT: Okay. We agree.

8 MR. SHIRLEY: Number 8 is what we're
9 now arguing, right?

10 MR. KNIGHT: That's correct.

11 MR. SHIRLEY: And that was my
12 confusion. Okay? And let me add this as
13 substantial evidence. Where has anybody
14 took that stand and said that the way they
15 were doing business, that the way it was
16 done, whatever their securities were,
17 whatever their practices were, there has
18 not been any criticism, nor -- there's got
19 to be -- when we ride down the highway, we
20 are told that we can't go but so fast.
21 We're told by common law that we can't
22 misdrive because we have a duty. You with
23 me? Well, where's the duty that they had
24 an obligation to do business differently
25 about all the transactions? I mean, the

1 breach, the negligence? This is wrongful
2 supervision when a guy has a criminal
3 intent and a scheme outside the scope and
4 course of his employment? And there's no
5 witness to say that you don't operate a
6 camping recreational facility like this
7 because it would be a breach of duty,
8 misconduct to do so. How can the Court
9 declare that there's a question of fact?
10 How does the jury say, yeah, they drove
11 too fast? Because there is no standard
12 that's been shown there has to be done in
13 a business like this.

14 The banking industry has the United
15 States Government, if it's a state bank
16 riding their coattails, and they tell them
17 what they gotta do, and that's pretty
18 easy. But that's not the way it is with
19 Sunshine Camping in Level Plains, United
20 States of America. That's the point I'm
21 trying to make. That's what's missing in
22 this case. In the wrongful hiring,
23 training, or supervision.

24 For example, the truth of the matter
25 is that Mr. York said the guides and

1 principles were that Union Planters is
2 supposed to train the dealer. And there
3 ain't no evidence that anybody from Union
4 Planters ever did a thing to train
5 anybody.

6 MR. KNIGHT: Your Honor, it was all
7 based on foreseeability. We have
8 testimony from three different people that
9 Comber Borland knew that Mr. Williams had
10 taken some amounts of money from the
11 company prior to each one of those loans
12 being entered into or Regions paying out
13 on each one of those fraudulent loans.
14 It's foreseeable that it would happen
15 again. It was foreseeable he would take
16 from the company, which there's testimony
17 that he did. And it was foreseeable that
18 he would take from other people. It's a
19 question of fact for the jury.

20 THE COURT: The motion is going to be
21 denied as to all matters except for the
22 negligent entrustment. That would be
23 granted as to that count.

24 MR. SHIRLEY: I just wanted to say
25 one little small thing if I might.

1 THE COURT: All right, sir.

2 MR. SHIRLEY: You see, paragraph 4 of
3 the complaint says that Jon Williams at
4 all times was the president of the
5 corporation and at all times pertinent and
6 that's incorporated in the conspiracy
7 count. They don't allege, they don't
8 allege this conspiracy. I don't believe
9 that's a correct statement of the law what
10 he said that you can charge Jon Williams
11 and Union Planters with conspiracy, and if
12 the jury decides that he really was
13 outside the scope of his employment that
14 you have a valid conspiracy action. I
15 don't believe you can do that because of
16 what the law says about the peculiarity of
17 a corporation can't conspire with itself.

18 Secondly, that ain't what's alleged
19 against them. They're not alleging that.
20 They're saying that he was an officer,
21 agent. And that's the point that I'm
22 trying to make about the conspiracy. I
23 think that it's dead on arrival so to
24 speak for that reason.

25 THE COURT: I may change my decision

1 on that, but I'll take a look at it.

2 Okay.

3 MR. SHIRLEY: I need two or three
4 minutes to see where we're going, to see
5 if we can get through.

6 THE COURT: All right.

7 (Break in the proceedings.)

8 (The jury entered the
9 courtroom.)

10 THE COURT: All right. You may
11 proceed, Mr. Shirley. The plaintiff has
12 rested and now the defendant is going to
13 present.

14 MR. SHIRLEY: At this time the
15 defendant calls James Channell by
16 deposition. Mr. Channell was deposed on
17 August 4, 2005, in Jackson, Mississippi,
18 which I think the Court would take
19 judicial knowledge is more than a
20 150 miles away from here.

21 MR. SMITH: We'll stipulate to that,
22 Your Honor.

23 MR. SHIRLEY: And Mr. Channell as the
24 testimony has developed, is called as an
25 adverse witness due to his

1 responsibilities with Regions.

2 THE COURT: And I'll just instruct
3 the jury that you should give this
4 evidence the same weight that you would
5 give to testimony that was offered live
6 from the witness stand by a witness.

7 MR. SHIRLEY: Ask you go to page 6
8 line 15. And by way of explanation, I
9 didn't show you, but you see the pages
10 start and jump over here to the left.
11 Sometimes the depositions are set up --

12 MR. MATTHEWS: I'm not Mr. Channell,
13 by the way.

14 MR. SHIRLEY: Right.

15 (The following was being read
16 from the deposition testimony
17 of James M. Channell, Jr., by
18 Mr. Matthews and Mr. Shirley.)

19 BY MR. SHIRLEY:

20 Q State your full name for the record, please.

21 A James M. Channell, Jr.

22 Q Mr. Channell, how are you currently employed?

23 A I am a fraud investigator.

24 Q Who is your employer?

25 A Union Planters Bank, Regions Bank.

1 Q How long have you held that position?

2 A January of '02.

3 Q And just a bit of basic background, where did
4 you grow up?

5 A Hazelhurst, Mississippi.

6 Q Did you graduate from high school there?

7 A Yes.

8 Q What year was that?

9 A Eighty-seven.

10 Q Did you go on to college after graduating from
11 high school?

12 A Yes.

13 Q Where was that at?

14 A Southern Mississippi.

15 Q Did you graduate from the University of
16 Southern Mississippi?

17 A Yes.

18 Q And what was your degree?

19 A Criminal justice.

20 Q And what year did you graduate?

21 A Ninety-one.

22 Q And after you graduated from college what did
23 you do full time for employment?

24 A Went to work for the State tax commission,
25 special agent.

1 Q And how long did you do that?

2 A Until roughly 1998, I believe.

3 Q And what caused the change at that time?

4 A I went to work for the attorney general's
5 office.

6 Q And how long did you work for the attorney
7 general's office?

8 A Until I came here.

9 Q So from 1998 through 2002?

10 A Correct, 1988 (sic) or 1999, I can't remember
11 exactly.

12 Q I'm going to assume with a background in law
13 enforcement you've never been arrested or
14 convicted of any crimes, have you?

15 A Not that I'm aware of.

16 Q Now in 2002 what were you hired by Union
17 Planters to do?

18 A Fraud investigations.

19 Q And if you would, tell me what that's comprised
20 of and what you do in relation to your
21 employment.

22 A What I do is I'm responsible also security --
23 for the physical security of the branches, the
24 safe work environment, any -- basically any
25 criminal attempts or criminal acts made against

1 the bank and also internal investigations.

2 Q Now, the aspect we would be talking about a lot
3 today is about fraud issues. Tell me what your
4 responsibilities in relation to -- and I assume
5 you're talking about fraud against the bank --

6 A Right.

7 Q -- either by employees or customers or
8 outsiders. Tell me about what your
9 responsibilities are and what you do in
10 relation to that.

11 A Well, you got to determine if there is fraud.
12 And if there is fraud when you work the
13 investigation, then give it to the authorities.

14 Q Tell --

15 MR. SHIRLEY: Excuse me, page 10,
16 skipping to page 10, line 9.

17 (Continued reading.)

18 BY MR. SHIRLEY:

19 Q Tell me when you first became aware of concerns
20 relating to Mr. McAllister's loan with Union
21 Planters.

22 A J.L. (sic) Ward of the Alabama Bureau of
23 Investigations contacted me in February and
24 stated there could be some problems with some
25 loans.

1 Q And J.L. Ward was employed with whom?

2 A Alabama Bureau of Investigations.

3 Q And that would have been in February 2004?

4 A Correct.

5 Q What did Mr. Ward tell you at that time?

6 A He said he was working -- if I'm not mistaken
7 he was possibly working the title fraud, and he
8 said he had run across a title involving loans
9 with Union Planters.

10 Q And did he tell you at that time who this is
11 from?

12 MR. SHIRLEY: I'm sorry. What I was
13 trying to tell you to be careful of, I
14 didn't do. So let me start over, line 25
15 of page 10.

16 (Continued reading.)

17 BY MR. SHIRLEY:

18 Q Did he tell you at the time who this particular
19 fraud involved or who he suspected it involved
20 at the time?

21 A On the titles, yes, Jon Williams.

22 Q And who is Jon Williams?

23 A Jon Williams is -- was, if I'm not mistaken,
24 president of Sunshine Camper.

25 Q And to your knowledge what have you found out,

1 what is Sunshine Center, Inc.?

2 A Sells campers.

3 Q You understand that they're a retail
4 recreational vehicle sales outlet or dealer; is
5 that correct?

6 A I understand they sell campers. I don't know
7 exactly what they sell, but they sell campers.

8 Q Now, in response to Mr. Ward's contact what, if
9 anything, did you do?

10 A Upon his contact I contacted Dale York.

11 Q And tell me for the record who is Dale York?

12 A He is, from my understanding, he's over the
13 indirect loans in Paducah, Kentucky, I guess.
14 Paducah is in Kentucky.

15 Q And what was the basis of your inquiry to
16 Mr. York? What were you asking or trying to
17 find out from him?

18 A I told him I needed the loan packages.

19 Q And what loan packages did you order?

20 A The ones that J.L. Ward, the names he gave me.

21 MR. SHIRLEY: Okay. Let's skip over.

22 And be sure that I am telling you right.

23 I highlighted your copy to help me. Page
24 19, line 2, is that the next highlighted
25 segment?

1 MR. MATTHEWS: Yeah.

2 (Continued reading.)

3 BY MR. SHIRLEY:

4 Q Now, as you worked specifically on Mr.
5 McAllister's loan package what, if any, of
6 those things did you do and what are the
7 results of those examinations?

8 A Well, the address did not belong to him -- if I
9 remember correctly -- the phone numbers did not
10 belong to him, and the payments were in the
11 form of money order. And if I remember
12 correctly, those payments were also made at the
13 same -- not every time, but I do remember
14 looking at one. They were -- those payments
15 would come in at the same time. As for example
16 McAllister, Peters, and Lawson would all come
17 in at the same time.

18 MR. SHIRLEY: Okay. And moving to
19 page 18, line 11.

20 (Continued reading.)

21 Q Let's talk about some things as a --

22 MR. SHIRLEY: And that is a
23 highlighted, isn't it?

24 (Continued reading.)

25 BY MR. SHIRLEY:

1 Q -- fraud investigator when you're looking at a
2 loan, tell me what you're looking for when you
3 suspect a fraudulent loan. What are the things
4 that are red flags or concerns for you as you
5 look at a loan package and determine whether or
6 not there may be fraud involved in that loan?

7 A You try to verify as much information as you
8 can. Of course I'm doing it 20/20. I mean,
9 hindsight's 20/20. I'm doing it after the fact
10 to try to verify addresses, try to verify
11 signatures if you can. We had no signatures in
12 that. Look at the source of the payments,
13 where they're coming from, look at the phone
14 numbers, look at any information that we may
15 have in a loan package. You try to verify all
16 that just by a step-by-step basis.

17 MR. SHIRLEY: And have we already
18 read that part?

19 MR. MATTHEWS: Yeah.

20 MR. SHIRLEY: Okay. Let me ask you
21 to look at page 36, line 7. That is the
22 next one.

23 (Continued reading.)

24 BY MR. SHIRLEY:

25 Q When you determined that this was a fraud in

1 March of 2004, just to clarify, I may have
2 already asked you, but did you notify both the
3 collections and Mr. York that this was a
4 fraudulent loan as soon as you knew or
5 understood that in March of 2004?

6 A I notified Mr. York and my supervisor.

7 MR. SHIRLEY: And help me. Is the
8 next highlighted page 49?

9 MR. SMITH: Page 49, Mr. Shirley?

10 MR. SHIRLEY: Yeah.

11 MR. MATTHEWS: Yeah.

12 MR. SMITH: Thank you.

13 MR. SHIRLEY: Line 19.

14 MR. MATTHEWS: Yeah.

15 (Continued reading.)

16 BY MR. SHIRLEY:

17 Q Are you testifying that you knew when Robert
18 McAllister's payment cards or coupons were sent
19 out to the address that Union Planters had,
20 this notification came back? You understand
21 what happened?

22 A I didn't know that.

23 Q Well, if you wanted to verify that how would
24 you go about doing that?

25 A I would contact Dale York. Now, whether he's

1 the right person I don't know.

2 Q You said that you received information payments
3 were made to Planters with a money order that
4 covered payment for McAllister, Peters, and
5 Lawson. It was tied together, did I say that
6 right?

7 A No, sir.

8 Q Well, clarify.

9 A It was multiple money orders.

10 Q But how do you know it was paid by money
11 orders?

12 A Because I looked at the image of it.

13 Q Meaning what? I know you understand what
14 you're talking about, but I don't work at Union
15 Planters. You looked on a computer?

16 A Just like anybody sends -- all payments are
17 imaged if they come in in paper form, check,
18 payment coupon, and you got the payment coupon,
19 and then following that you got the source of
20 the payment.

21 Q And you have a printout that's in your file
22 concerning this matter or just saw that on the
23 computer is what I'm trying to ask you?

24 A Yes. You pull it up on a computer and then you
25 print it out.

1 Q And did you, in fact, print it out for your
2 file? That's what I'm asking about.

3 A Yes, sir.

4 MR. SHIRLEY: Okay. And go with me.
5 I think the next page would be 62.

6 MR. MATTHEWS: Okay.

7 (Continued reading.)

8 BY MR. SHIRLEY:

9 Q Is there anyone in the security department that
10 knows more about the matters involved in Jon
11 Williams and Robert McAllister or Mr. Lawson or
12 Ms. Peters -- and that other name is under a
13 motion in limine.

14 A Not to my knowledge.

15 Q Have you interacted with Hubert Lawson?

16 A We had a phone conversation.

17 Q And what was it about?

18 A About the loan. I don't know if it was Hubert
19 Lawson, III, or not, but interacted with Bert
20 Lawson.

21 Q You don't know if Bert Lawson is the same one
22 as Hubert Lawson, III?

23 A Should be. He said he was.

24 Q And what did he explain to you --

25 MR. SMITH: Your Honor, we object,

1 that would be hearsay. Mr. Lawson is a
2 resident of the state of Alabama. We
3 believe we've previously subpoenaed him.
4 And what Mr. Lawson may have said to
5 Mr. Channell is very clearly hearsay.

6 THE COURT: I sustain that objection.

7 MR. SHIRLEY: Well, the reason that
8 it's offered is because it is relating to
9 the investigation, and it is knowledge
10 that comes from their security officer.
11 That was the purpose in offering it.

12 THE COURT: Just to show his
13 knowledge?

14 MR. SHIRLEY: To show his knowledge,
15 what he learned about it, and what, if
16 anything, he did about it.

17 THE COURT: I'll overrule the
18 objection.

19 (Continued reading.)

20 A That I believe Jon Williams was his former --
21 there's some kind of relation there,
22 brother-in-law, something to that effect.

23 Q And Dorothy Peters, did you interact with her?

24 A Never was able to reach her, no, sir.

25 MR. SHIRLEY: And look at -- check

1 and see if page 66 --

2 MR. MATTHEWS: No.

3 MR. SHIRLEY: I'm sorry?

4 MR. MATTHEWS: Sixty-seven?

5 MR. SHIRLEY: Yeah. Page 67, line
6 18.

7 (Continued reading.)

8 BY MR. SHIRLEY:

9 Q And when you say the chargeoffs, that means
10 that you have written this e-mail relative to
11 Mr. Lawson, Dorothy Peters, Mr. McAllister.
12 And you've asked that the loans and the loan
13 numbers and the accounts to be charged off with
14 a zero balance.

15 A Correct, to a criminal loss.

16 Q And do you know if that was, in fact, done?

17 A Yes, sir.

18 Q And if I understand this form, when you start
19 your investigation it would be your
20 responsibility to apprise someone like Ms. Cane
21 whether or not to charge off the indebtedness
22 or not?

23 A If it's criminally related, yes, sir.

24 MR. SHIRLEY: That's all I have.

25 THE COURT: All right.

1 MR. SMITH: We have nothing to offer
2 from that deposition, Your Honor.

3 MR. SHIRLEY: Thank you,
4 Mr. Matthews.

5 MR. MATTHEWS: You're welcome.

6 MR. SHIRLEY: No further evidence on
7 behalf of Sunshine. And we rest, Your
8 Honor.

9 MR. MATTHEWS: We rest, Judge.

10 MR. SMITH: We have no rebuttal, Your
11 Honor.

12 THE COURT: All right, sir. What we
13 will have remaining when we return will be
14 the closing arguments by the attorneys and
15 then the Court's instructions to you.
16 There's some work that needs to be done
17 before we can get to that point. And I'm
18 just estimating it will probably take
19 about two hours to get there. So rather
20 than have you come in early and wait
21 around, I'm going to excuse you at this
22 time to be back at 1:45 in the jury room.
23 Now, the attorneys I would like to be back
24 at 1:15. And we'll take care of the
25 business that we have, and then we'll try

1 to begin with our closing arguments about
2 1:45. So with that I'll excuse the jury
3 to leave and be back in the jury room at
4 1:45. Thank you.

5 (The jury left the courtroom.)

6 THE COURT: Okay. This is a renewal
7 of your motion?

8 MR. SHIRLEY: Yes.

9 MR. MATTHEWS: Judge, I may not be
10 back by 1:15 but by all means go ahead and
11 have the charge conference.

12 MR. SHIRLEY: At this time, Your
13 Honor, we do resubmit our motion for
14 judgment as a matter of law at the close
15 of all the evidence, and restate all of
16 our grounds to the Court, all of our
17 previous arguments. And again
18 respectfully submit that that conspiracy
19 case should go out, that as well as the
20 others, but most assuredly that one.

21 MR. SMITH: We readopt all our
22 arguments previously made.

23 THE COURT: Okay. I'll give you a
24 ruling on your motion when we get back.

25 MR. SMITH: Thank you.

1 (Break in the Proceedings.)

2 THE COURT: Y'all want to review
3 these jury charges? First of all, I'll
4 announce that on the motion of Sunshine
5 Camping as a judgment as a matter of law,
6 it will be denied with the exception that
7 the Court is going to grant it as to the
8 count for negligent entrustment and
9 conspiracy. I'm gonna grant it as to
10 conspiracy as well.

11 CHARGE CONFERENCE

12 THE COURT: So with that we'll look
13 at the plaintiff's proposed charges. I've
14 glanced through those that have been
15 requested by both parties. And there are
16 some duplications, and we'll get to those
17 in the defendant's requested charges.
18 First of all as to charge number 1 --

19 MR. SMITH: Your Honor, these are of
20 the plaintiff's charges, plaintiff's
21 requested?

22 THE COURT: Yes, sir.

23 MR. SMITH: Okay. Thank you.

24 MR. SHIRLEY: And, Judge, I didn't
25 notice until I started reviewing, but mine

1 should just be numbered chronologically, I
2 left the number off, when you get to them.

3 THE COURT: That's not a problem. We
4 can --

5 MR. SHIRLEY: If you'll just identify
6 them as number 1 through whatever they are
7 as we go along.

8 THE COURT: I guess the best way to
9 address this is just, Mr. Shirley, if you
10 have an objection to the proposed charge,
11 you state your objection and I'll make a
12 decision unless --

13 MR. SHIRLEY: All right.

14 THE COURT: -- my inclination is not
15 to give it, and then I'll just announce
16 that. And then, Mr. Smith, you and
17 Mr. Knight can address it.

18 MR. SHIRLEY: Let me ask you -- not
19 ever trying a case, a jury case, with
20 you -- I know like number 1 it shows it's
21 the Alabama pattern jury instruction. And
22 if, in fact, that jury instruction was
23 given, you know, in the general charges by
24 the Court, then, you know, I would object
25 to it being given the second time.

1 THE COURT: Yeah, I won't do that.

2 MR. SHIRLEY: Okay.

3 THE COURT: After having reviewed the
4 requested charges, I believe that they
5 adequately cover all the required charges
6 unless y'all have a request for an
7 additional charge. Now, I do have some
8 introductory charges, but they don't go to
9 the specific causes of action.

10 MR. SHIRLEY: We don't object to
11 number 1.

12 THE COURT: Okay. Number 1 will be
13 given.

14 MR. SHIRLEY: And number 2 we object.

15 THE COURT: You do object?

16 MR. SHIRLEY: Yes, sir, because
17 although it might be -- notice it says
18 modified. I would submit to the Court
19 that it's inadequate because it doesn't
20 have the qualifying language to associate,
21 you know, what is enumerated that's
22 supposed to be found under the facts which
23 have been presented in this case.

24 MR. SMITH: Our response, Your Honor,
25 would be we'd be satisfied for the Court

1 to give pattern charge 3.06 as it exists
2 in the book.

3 THE COURT: Okay. Well, that charge
4 is different than the one you requested.
5 Well, let me see. Let me check the
6 update, I guess, before I make that
7 statement.

8 MR. SMITH: I'll tell you what. Let
9 me -- I need to get the book. I've got my
10 book here.

11 THE COURT: Oh, I see. Okay. Yeah.

12 MR. SMITH: Your Honor, the only
13 reason -- the material change is the
14 wrongful acts or omissions. We have both
15 negligent and wanton counts in this
16 complaint and that was the purpose of the
17 modification. But, Your Honor, we don't
18 have an objection to pattern charge 3.06
19 being given with negligent acts or
20 omissions of his agent done within the
21 scope of his employment. That's what the
22 pattern says.

23 THE COURT: All right. Any objection
24 to that?

25 MR. SHIRLEY: No, sir.

1 THE COURT: All right. I'm just
2 gonna modify, then. Where it says
3 wrongful, I'm gonna insert negligent.
4 Okay. Number 3.

5 MR. SHIRLEY: I don't believe that
6 it's a proper charge. Ostensible
7 authority or apparent authority as
8 interpreted there applies to the
9 substantial evidence in this case.

10 MR. SMITH: Your Honor, our reason
11 for requesting that charge has to do with
12 the fact that from November/December of
13 '02 up until January of '04, Sunshine
14 never notified the bank that there was
15 any -- that Mr. Williams was no longer
16 authorized to assign contracts.

17 THE COURT: Court will give that
18 charge.

19 MR. SHIRLEY: Judge, the point I'm
20 trying to make is he just said that was an
21 omission. And this says by acts. Doesn't
22 say anything about omissions or failing to
23 do something. It says definitive
24 evidence. Ostensible authority, apparent
25 authority is a peculiar animal of agency

1 law. And he says that what the -- what
2 they're trying to say by their facts is
3 that when you didn't tell them what went
4 on, that that's supposed to be evidence
5 of apparent authority. Well, negative
6 conduct or no conduct or omission is not
7 something that can be apparent authority.

8 MR. SMITH: Then, Your Honor, to
9 clear up any confusion Mr. Shirley may
10 have, they, Sunshine, provided the
11 document -- I can't recall the number,
12 it's out of Plaintiff's Exhibit 1 -- that
13 says these individuals are authorized to
14 assign contracts on behalf of Sunshine.
15 The Court will recall both Mr. Williams
16 and Mr. Borland were on that document.

17 THE COURT: You know, I would be
18 willing to modify it by saying his acts,
19 omissions, words, or conduct reasonably
20 interpreted if that --

21 MR. SMITH: That's acceptable to us.

22 THE COURT: I'm gonna give the
23 charge. I just think it's applicable in
24 this case. All right. Number 4, I think
25 it's just the standard --

1 MR. SHIRLEY: Yes.

2 THE COURT: -- pattern charge breach
3 of contract. Any objection?

4 MR. SHIRLEY: No, sir.

5 THE COURT: Pattern 5 is the -- or
6 charge 5 is, I believe, the standard
7 charge for negligence, definition of
8 negligence. Any objection?

9 MR. SHIRLEY: No, sir.

10 THE COURT: Number 6, joint
11 liability, joint several liability.

12 MR. SHIRLEY: Well, that's an
13 apparent clear statement of the law, but
14 it's vague and insufficient as to this
15 case.

16 THE COURT: I would like to hear how
17 this applies in this case, Mr. Smith.

18 MR. SMITH: Your Honor, there is an
19 argument from the defendant Sunshine that
20 Mr. Williams acted outside the scope of
21 his authority. I think the evidence is
22 clear whether Mr. Williams acted outside
23 or within the scope of his authority with
24 Sunshine, he committed negligent acts. If
25 he was, in fact, outside the scope of his

1 authority, then the claims on which we're
2 trying to predicate respondeat superior
3 liability on Sunshine would apply;
4 however, on the negligent hiring,
5 training, and supervision you've got their
6 negligent hiring, training, and
7 supervision -- that is Sunshine -- going
8 along with Mr. Williams's wrongful
9 negligent acts in creating these
10 fraudulent contracts. They're jointly and
11 severally liable for those acts because
12 their -- because the proximate result of
13 that negligence are the damages to our
14 client. Now, obviously we believe that
15 under the evidence the jury could find
16 that these acts were committed within the
17 line and scope of employment. But I think
18 also under the evidence the jury could
19 find they weren't committed within the
20 line and scope of the employment. But
21 because of the wrongful hiring, training,
22 and supervision count they can -- both
23 Sunshine and Mr. Williams can be jointly
24 and severally liable for the damages
25 caused to the bank.

1 THE COURT: I believe -- because of
2 the facts of this case and the issue that
3 we have about the corporation's liability
4 for the actions of Mr. Williams and the
5 fact that the jury could find that it
6 either is liable or is not liable, I
7 believe this charge could be confusing and
8 I'm going to refuse to give it.

9 MR. SHIRLEY: And, Your Honor, I'm
10 sorry but the --

11 THE COURT: I'm gonna refuse number
12 6.

13 MR. SHIRLEY: Thank you. Insofar as
14 number 7 is concerned, we would just
15 submit that there's insufficient evidence
16 to substantiate wantonness. Appears to be
17 the pattern jury instruction.

18 THE COURT: I'm going to give that
19 charge.

20 MR. SHIRLEY: And same objection to
21 number 8.

22 THE COURT: That charge will be
23 given, also.

24 MR. SHIRLEY: Charge number 9, we
25 object to it on the grounds that it's

1 confusing. We object to it on the grounds
2 that it is being read from the judge.
3 There is no alternative provision in this.
4 There is no basis saying if, in fact, you
5 find by the substantial evidence thus and
6 so, et cetera, et cetera, then -- the form
7 is confusing. It's lengthy. It's wordy.
8 And I think it's overly suggestive as
9 being a charge of hypothesis. Meaning,
10 when you read this it's going to suggest
11 that the jury is supposed to find that
12 fraud has occurred when we submit that is
13 not been established as a matter of law
14 and fact.

15 MR. SMITH: And, Your Honor, our
16 response would be this is pattern charge
17 18.00. And it says at the end of the
18 first paragraph pattern charge, the fraud
19 charge in the plaintiff's complaint, is --
20 and it puts in brackets here referred to
21 the charges in the complaint and closes
22 the bracket. And all we have done in
23 preparing is as the pattern jury charge
24 suggests, include the misrepresentations
25 and suppressions we assert in our

1 complaint.

2 THE COURT: And then I note that that
3 charge is followed up with the various
4 definitions of willful, and I believe
5 mistaken -- or reckless and then mistaken
6 fraud.

7 MR. SMITH: Yes, sir, that's correct.

8 THE COURT: Okay. Court will give
9 charge number 9. Objection to 10?

10 MR. SHIRLEY: I'm sorry, I thought
11 you said that you would give that and the
12 ones that followed.

13 THE COURT: It is my intention to do
14 that, I just would give you an
15 opportunity --

16 MR. SHIRLEY: We would -- just for
17 the record we would object. That would go
18 through --

19 THE COURT: Yeah.

20 MR. SHIRLEY: -- 13?

21 THE COURT: Yeah. I'll be giving 10,
22 11, 12, and 13, yeah.

23 MR. SHIRLEY: Number 14 we object on
24 the grounds that there is no evidence to
25 support the charging of that, because as a

1 matter of law there is not conversion, as
2 we addressed earlier.

3 THE COURT: Court's going to give
4 that charge. Number 15 will be given.
5 Court will give number 16.

6 MR. SHIRLEY: We would object to 17
7 as being vague and incomplete. And it
8 also being overly suggestive that there is
9 something when the question is has the
10 plaintiff proven by the substantial
11 evidence and is the jury able to find from
12 consideration of all the substantial
13 evidence whether or not thus and so. It's
14 not a pattern jury instruction. It's an
15 abstracted statement of the law.

16 MR. SMITH: Your Honor, we would say
17 that there is no pattern jury instruction
18 that applies to our wrongful hiring and
19 training supervision count we've been able
20 to find. This was taken from the Voyager
21 case where the Court stated the law with
22 regard to wrongful hiring, training, and
23 supervision. Your Honor, if the Court
24 wants to insert, as Mr. Shirley has
25 suggested, something that it's the

1 plaintiff's obligation to produce or to
2 satisfy these elements by substantial
3 evidence, we understand that. But we
4 believe this is a correct statement of the
5 law and given the wrongful hiring,
6 training, and supervision count that it's
7 appropriate to be given.

8 THE COURT: Where it says liability
9 depends upon its being established by
10 substantial evidence, that such
11 incompetence was actually known, et
12 cetera, I will modify it to read in that
13 fashion, substantial evidence by the
14 plaintiff. And number 18 will be refused.
15 Nineteen will be given. Twenty will be
16 given. Twenty-one will be given.
17 Twenty-two will be given.

18 MR. SHIRLEY: We would object to
19 that, Your Honor. We respectfully submit
20 that the previous charges that were given
21 adequately qualify what the damages are.
22 And to give this language and read this
23 language to the jury would be suggestive
24 that the Court has directed that they must
25 find under the allegations and argument of

1 the plaintiff and plaintiff counsel that
2 this is to be done, this is another one of
3 those hypothesis.

4 THE COURT: You talking about 22?

5 MR. SHIRLEY: Well, 23.

6 THE COURT: You're referring to 23?

7 MR. SHIRLEY: Yes, sir, I thought you
8 said you were giving 22.

9 THE COURT: I did.

10 MR. SHIRLEY: And remember I've got
11 this vent over my ears --

12 THE COURT: Yeah.

13 MR. SHIRLEY: -- and I apologize.

14 THE COURT: Court will give 23.

15 MR. SHIRLEY: I'm sorry?

16 THE COURT: I will give 23. We'll
17 review the verdict form that was attached
18 in just a minute. Let's look at the
19 defendant's requested charges.

20 MR. SHIRLEY: Are you gonna state
21 that these are charges from the parties or
22 these the charges --

23 THE COURT: I normally don't say
24 anything about that.

25 MR. SHIRLEY: That's what I wondered.

1 THE COURT: Okay. What will be
2 number 1, wantonness definition --

3 MR. SMITH: I think that's already
4 covered, Your Honor.

5 THE COURT: That's what I was
6 thinking. We agree that that's already
7 been given by pattern charge, so I'm going
8 to deny that.

9 MR. SMITH: As to number 2, duty owed
10 negligence and ordinary care, Your Honor,
11 that is a charge from the pattern. And I
12 know the pattern has a very similar
13 charge. We have no objection to that one
14 being given as long as it's a pattern
15 charge.

16 THE COURT: All right. Number 2 will
17 be given. I think we have adequately
18 covered punitive damages.

19 MR. SHIRLEY: That's Number 4?

20 THE COURT: Number 3.

21 MR. SMITH: Three.

22 MR. SHIRLEY: Oh, okay.

23 THE COURT: So I'm going to deny
24 defendant's requested charge number 3.
25 Number 4 on speculation, I would propose

1 to grant that charge.

2 MR. SMITH: Again, we have no
3 objection as long as that's a pattern
4 charge, Your Honor.

5 MR. SHIRLEY: And forgive me but you
6 are giving that?

7 THE COURT: Yes.

8 MR. SHIRLEY: Okay. I'm sorry.

9 THE COURT: I understand. I don't
10 know if it's a pattern charge or not.

11 MR. SHIRLEY: I believe it is. We'll
12 look it up.

13 THE COURT: I think it may be, too.

14 MR. SMITH: We'd say that there's a
15 pattern charge on speculation very similar
16 to that, Your Honor, and as long as it's a
17 pattern charge we understand. But if it's
18 not a pattern charge we do object.

19 MR. SHIRLEY: Eleven twenty-two is a
20 pattern jury instruction. I believe
21 that's where it came from. I asked
22 somebody that helped me prepare this just
23 to go by that number and it appears to be
24 the same thing. Eleven twenty-two.

25 THE COURT: Okay. Yeah.

1 MR. SMITH: Okay.

2 THE COURT: Number 5, jury is the
3 judge of the facts.

4 MR. SHIRLEY: I believe that's a
5 pattern jury instruction as well.

6 THE COURT: And I've already given
7 that in my opening charge as well so I'm
8 going to grant that. I'll grant number 6.
9 Propose to grant number 7.

10 MR. SMITH: Your Honor, I believe
11 that's a pattern charge. And so long as
12 it is a pattern charge I don't have any
13 objection to it.

14 THE COURT: All right, sir. Number 8
15 is a standard charge that the Court gives.
16 I will give it. I believe it may be
17 included in my general charge. So I will
18 give it.

19 MR. SHIRLEY: Number 9 was -- is a
20 jury charge associated with jury verdict,
21 I guess.

22 THE COURT: Is there any objection to
23 9?

24 MR. SMITH: Without knowing, Your
25 Honor, what the plaintiff's verdict form

1 might look like, it's difficult for me to
2 frame an objection one way or the other.
3 And I would request the Court just pass on
4 ruling on this one until we discuss later
5 on what the verdict form might look like.

6 THE COURT: All right. Okay. Number
7 10?

8 MR. SMITH: We do object to that,
9 Your Honor. That is not a pattern charge.
10 I do not believe that is a correct
11 statement of the law. I think what the
12 law says, that any ambiguous provisions in
13 the dealer agreement or contract might be
14 resolved against Regions, but that's not
15 what it says. Says the language used in
16 the dealer agreement is claimed by the
17 plaintiff Regions and is to be construed
18 favorably to the nonmaker defendant
19 Sunshine. I don't believe that's a
20 correct statement of the law, nor do I
21 believe that the second paragraph this
22 dealer agreement will be construed
23 strictly against the plaintiff and
24 liberally in favor of defendant Sunshine,
25 I don't believe that's a correct statement

1 of law.

2 Third paragraph talking about
3 ambiguous provisions, that may be a
4 correct statement of the law. But again,
5 this is not a pattern charge. And to the
6 extent that there is a pattern charge
7 dealing with ambiguous contracts, then we
8 believe that's the appropriate one to
9 give. Going further, we don't believe any
10 of these contracts are in anyway
11 ambiguous. I mean, I think they're very
12 clear and very fine. Because of that I
13 don't believe it's proper for this charge
14 to be given.

15 MR. SHIRLEY: And we respectfully
16 submit that that is a correct and proper
17 application of contract law under the law
18 of Alabama. Any document drafted is to be
19 construed against the maker and liberally
20 in favor of the other party to the
21 agreement, the nonmaker of the document.
22 UCC law, that's insurance contract law,
23 that's contract law. This was taken from
24 a pattern jury instruction that involved
25 how you're supposed to interpret an

1 insurance contract. And it's the same
2 application, but that's also the general
3 application of law. And it also, the
4 pattern jury instruction says that it's to
5 be construed strictly against the
6 plaintiff, which is undisputedly the maker
7 of this document, and liberally in favor
8 of defendant Sunshine, which is not the
9 maker, drafter, creator, writer, author of
10 this document. And that the principles
11 should be -- these principles should be
12 employed in doing so. And the contract
13 law -- it will be for the jury to decide
14 if it is ambiguous. But to decide if it's
15 ambiguous they are permitted the
16 flexibility to rely upon it against the
17 maker. And then they are required by
18 law -- if this was a nonjury case it would
19 be the way you would be required to do it,
20 to review -- if you found ambiguous
21 provisions, it's supposed to be construed
22 most strongly against the maker and in
23 favor of the nonmaker, defendant Sunshine.
24 It's a proper, accurate, true statement of
25 the law, and it's appropriate under these

1 facts.

2 THE COURT: I'm gonna give it so that
3 it reads the language used in the dealer
4 agreement is framed by the plaintiff
5 Regions. And then I'm going to go down to
6 the third paragraph, ambiguous provisions
7 of a document will be construed most
8 strongly against the maker, drafter and in
9 favor of the defendant Sunshine.

10 MR. SHIRLEY: And we respectfully
11 except. And so the second paragraph is
12 omitted --

13 THE COURT: Yes, sir.

14 MR. SHIRLEY: -- from your charge?

15 THE COURT: All right. Eleven?

16 MR. SMITH: Your Honor, we do object
17 to that. That is not a pattern charge.
18 That is a charge that's personalized to
19 the facts of this case. It is confusing
20 as it is written. It is in effect an
21 affirmative charge from the Court. I
22 think line and scope is well covered in
23 other charges that the Court has agreed to
24 give, and we believe that it will be
25 improper for the Court to give this charge

1 as it is written.

2 MR. SHIRLEY: That's a simple
3 application of the law of principal and
4 agency, and it has also been established
5 there's a conflict in the evidence to
6 decide whether it is. And this charge is
7 saying to them if you find this. It's not
8 saying they have to find that. But if you
9 do find this, your verdict must be for
10 Sunshine and against the plaintiff.

11 THE COURT: I have a problem making
12 that read correctly. I'm going to deny
13 that charge. Twelve?

14 MR. SMITH: Your Honor, we would
15 object to that one on the same grounds as
16 we did on paragraph 11. We believe it's
17 adequately covered by other charges. We
18 believe it's confusing as written. And
19 the other grounds -- it's covered by other
20 charges and the other grounds we assign
21 this to defendant's Sunshine request for
22 charge number 11.

23 THE COURT: Court's going to deny 12.
24 I'm going to deny 13. I think that's
25 adequately covered by the charge regarding

1 burden of proof. I believe 14 (inaudible)
2 (Reporter asked for
3 clarification.)

4 THE COURT: I believe 14 is
5 adequately covered in other charges. I'm
6 going to deny it as well. Okay. I have
7 drafted a verdict form here that was just
8 taken from your proposal with the
9 inconclusion of punitive damages. So if
10 y'all will just take a look at that and
11 see.

12 MR. SMITH: Thank you, Your Honor.
13 Regions is satisfied with that verdict
14 form, Your Honor.

15 MR. SHIRLEY: Your Honor, we believe
16 first of all that under the way the case
17 has been tried that it is a possibility
18 that the Court could -- the jury could, in
19 fact, find for Jon Williams, against Jon
20 Williams on behalf of the plaintiff, and
21 then find Sunshine Camping to be not
22 responsible or a verdict for defendant
23 Sunshine. And the second part of this
24 uses the plural term defendants, and it
25 does not distinguish. And I guess to make

1 it accurate it would need to be that
2 broken down. And I'm not in the habit of
3 giving suggestive verdict forms to the
4 Court when I give my jury charges --

5 THE COURT: Yeah.

6 MR. SHIRLEY: -- and that's out of
7 the pattern jury instruction.

8 MR. SMITH: Maybe, Your Honor, the
9 thing to do is have two verdict forms, one
10 as to the claims against Sunshine and one
11 as to the claims against Williams.

12 THE COURT: Okay.

13 MR. SMITH: And Regions would be
14 satisfied if there are two verdict forms
15 like that.

16 THE COURT: And then when I give the
17 jury its instruction about filling out
18 this form, I will instruct the jury that
19 they may find -- let's see. Well, let me
20 just ask y'all. Do you think any other
21 directive instructions need to be given --

22 MR. SMITH: If --

23 THE COURT: -- with the two separate
24 verdict forms?

25 MR. SMITH: I know that I will talk

1 about it in my part of closing, Your
2 Honor, if there are two separate forms,
3 and we're gonna ask them to return a
4 verdict for both of them. So I mean, to
5 the extent that that argument may be
6 explanatory. Now, to answer your question
7 directly, we would request that the Court
8 to say if you find in favor of Regions
9 against Sunshine write it here, write
10 whichever you found. If you find in favor
11 of Regions and against Williams here, but
12 you have to fill out both forms.

13 THE COURT: Right. Okay. I will
14 have these identified as to each
15 defendant. In other words, one will say
16 for defendant Sunshine Camping Center and
17 the other for the defendant Jon K.
18 Williams. The name will be mentioned in
19 each verdict form. So it will say: We,
20 the jury, find for the defendant Jon K.
21 Williams and against the plaintiff on one
22 form. On the other form it'll say: We,
23 the jury, find for the defendant Sunshine
24 Camping.

25 MR. SHIRLEY: Against the plaintiff.

1 THE COURT: Yeah. And at the top
2 it'll say for the plaintiff against the
3 defendant and --

4 MR. SHIRLEY: You'll give us a copy
5 to look at that before we make our
6 summation?

7 THE COURT: I will. All right. With
8 the exception of making that correction in
9 the verdict form, then, are we ready to
10 proceed with closing arguments?

11 MR. SMITH: Regions is, Your Honor.

12 MR. SHIRLEY: Yes, Your Honor, I do.

13 THE COURT: It'll be about five
14 minutes probably before.

15 (Break in the proceedings.)

16 MR. SMITH: We're satisfied. I think
17 all of us are, Your Honor.

18 MR. SHIRLEY: We don't have any extra
19 copies of those, do we?

20 THE COURT: No, but we can sure get
21 them.

22 MR. SHIRLEY: I'm not -- I don't
23 think -- I'm just trying to -- I'm not
24 objecting to the form, I'm just not as
25 comfortable using that as I am in some

1 cases. You follow what I'm saying?

2 THE COURT: Uh-huh.

3 MR. SHIRLEY: And that's the only
4 reason I would like to have ... have a
5 copy.

6 THE COURT: If you'll take that in
7 there to Ms. Millard and ask her to
8 make --

9 MR. SHIRLEY: I only need the one ...
10 (The jury entered the
11 courtroom.)

12 THE COURT: Ladies and gentlemen, at
13 this time we're prepared to move forward
14 with our closing arguments, first for the
15 plaintiff.

16 (Closing arguments by Mr.
17 Knight.)

18 (Closing arguments by Mr.
19 Shirley.)

20 (Closing arguments by Mr.
21 Matthews.)

22 THE COURT: Before we go further just
23 let me ask, is there anybody has an urgent
24 need to take a break before we go into the
25 final closing arguments? Okay.

1 Mr. Smith.

2 (Closing arguments by Mr.
3 Smith.)

4 THE COURT: Now, that you've heard
5 all the evidence and the arguments of
6 counsel, it becomes my duty to explain to
7 you the rules of law that you must follow
8 and apply in deciding this case. When I
9 am finished you will go to the jury room
10 and begin your deliberations. In deciding
11 the case you must follow and apply all the
12 law as I explain it to you whether you
13 agree with the law or not. Regardless as
14 to any opinion you may have as to what the
15 law is or ought to be, it would be a
16 violation of your sworn duty to base your
17 verdict upon anything other than the
18 evidence in the case. Also, you are not
19 to single out one instruction alone as
20 stating the law, but must consider the
21 instructions as a whole. You must not let
22 your decision be influenced in anyway by
23 either sympathy for or prejudice against
24 anyone. Both the public and the parties
25 expect that you will carefully and

1 impartially consider all the evidence
2 without prejudice or bias or sympathy and
3 follow the law as stated by the Court to
4 render a just verdict regardless of the
5 consequences. Our system of law does not
6 permit jurors to be governed by bias,
7 prejudice, or sympathy, or by public
8 opinion.

9 In your deliberation you should
10 consider only the evidence, that is the
11 testimony of the witnesses and exhibits
12 that I have admitted in the record;
13 however, as you consider the evidence both
14 direct and circumstantial, you make
15 deductions and reach conclusions which
16 reason and common sense lead you to make.
17 Direct evidence is the testimony of one
18 who asserts actual knowledge of a fact,
19 such as an eyewitness. Circumstantial
20 evidence is proof of a chain of facts and
21 circumstances tending to prove or disprove
22 an ultimate conclusion.

23 Remember that anything the lawyers
24 say is not evidence in the case. The
25 function of the lawyers is to point to

1 those things most significant or most
2 helpful to their side of the case. It is
3 your own recollection and interpretation
4 of the evidence that controls. What the
5 lawyers say is not binding upon you.
6 Also, you should not assume from anything
7 that I may have said or any questions I
8 may have asked that I have any opinion
9 concerning any of the issues before you in
10 this case. Except for my instructions to
11 you on the law you should disregard
12 anything I may have said during the trial
13 in arriving at your decision concerning
14 the facts.

15 Now, in saying that you must consider
16 all of the evidence, I do not mean that
17 you must accept all the evidence as true
18 or accurate. You should decide whether
19 you believe what each witness had to say
20 and how important the testimony was. In
21 making that decision you may believe or
22 disbelieve any witness in whole or in
23 part. Also, the number of witnesses
24 testifying concerning any particular
25 dispute is not necessarily controlling.

1 You may decide that the testimony of a
2 smaller number of witnesses concerning any
3 fact in dispute is more believable than
4 the testimony of a larger number of
5 witnesses to the contrary.

6 In deciding whether you believe or do
7 not believe any witness, I suggest that
8 you ask yourself a few questions. Did the
9 person impress you as one who was telling
10 the truth; did the witness have any
11 particular reason not to tell the truth;
12 did the witness have a personal interest
13 in the outcome of the case; did the
14 witness seem to have a good memory; did
15 the witness have the opportunity and
16 ability to observe accurately the things
17 he or she testified about; did the witness
18 appear to understand the questions clearly
19 and answer them directly; did the
20 witnesses' testimony differ from other
21 testimony or other evidence.

22 You should also ask yourself whether
23 there was evidence tending to prove that
24 the witness testified falsely concerning
25 some important fact or whether there was

1 evidence that at some other time the
2 witness said or did something or failed to
3 say or do something which was different
4 from the testimony he or she gave before
5 you during the trial. You should keep in
6 mind of course that a simple mistake by a
7 witness does not necessarily mean that the
8 witness was not telling the truth as he or
9 she remembers it because people naturally
10 tend to forget some things or remember
11 other things inaccurately. So if a
12 witness has made a misstatement, you need
13 to consider whether that misstatement was
14 simply an innocent lapse of memory or an
15 intentional falsehood. And the
16 significance of that may depend on whether
17 it has to do with an important fact or
18 with only an unimportant detail.

19 Now, this is a civil case. It's not
20 a criminal case. Some of you may know
21 that in a criminal case the burden of
22 proof is beyond a reasonable doubt. This
23 is not the burden of proof in this case
24 because as I said, this is a civil case.
25 The burden is upon the plaintiff, in this

1 case Regions, to reasonably satisfy you by
2 the evidence of the truthfulness of the
3 matters and things claimed before the
4 plaintiff would be entitled to recover.

5 In deciding whether any fact has been
6 proved to your reasonable satisfaction,
7 you may consider the testimony of all of
8 the witnesses regardless of who may have
9 called them and all the exhibits received
10 in evidence regardless of who may have
11 produced them. If the proof fails to
12 establish any essential part of that which
13 is sought to be proved to your reasonable
14 satisfaction, then you should find against
15 the party having the burden of proof.

16 At this time I'm going to give you
17 specific instructions regarding to the
18 legal matters involved in the case. When
19 an agent is engaged to perform a certain
20 service, whatever he does to that end or
21 in furtherance of the employment is deemed
22 to be an act done within the scope of the
23 employment. An employer is liable to
24 others for the negligent acts or omissions
25 of his agent done within the scope of his

1 employment and within the line of his
2 duties. Apparent authority for which a
3 principal is responsible to a third party
4 for the act of his agent is that authority
5 which arises when the principal by his
6 acts, omissions, words or conduct
7 reasonably interpreted causes such third
8 party to believe that authority has been
9 given to an agent to act in his behalf and
10 such authority cannot be established
11 solely by the acts of the agent.

12 The plaintiff in this action sues the
13 defendant for breach of contract. The
14 elements of an action for breach of
15 contract are, one, existence of a contract
16 between plaintiff and defendant; two,
17 performance by the plaintiff; three,
18 defendant's failure to perform; and four,
19 resulting damage to the plaintiff.
20 Negligence means the failure to exercise
21 reasonable care. That is such care as a
22 reasonably prudent person would have
23 exercised under the same or similar
24 circumstances; therefore, negligence is
25 the failure to do what a reasonably

1 prudent person would have done under the
2 same or similar circumstances, or the
3 doing of something which a reasonably
4 prudent person would not have done under
5 the same or similar circumstances.

6 Wantonness is the conscious doing of
7 some act or omission of some duty under
8 knowledge of existing conditions and
9 conscious that from doing -- from the
10 doing of such act or omission of such duty
11 an injury will likely or probably result.
12 Before a party can be said to be guilty of
13 wanton conduct it must be shown that with
14 reckless indifference to the consequences
15 he either consciously and intentionally
16 did some wrongful act or consciously
17 omitted some known duty which produced the
18 injury.

19 When an agent commits wantonness
20 within the line and scope of his
21 employment, his employer is also liable
22 for such wantonness regardless of the
23 employer's lack of actual participation in
24 such wantonness with his agent.

25 Ladies and gentlemen of the jury, the

1 plaintiff in this case is claiming damages
2 from the defendants for an alleged legal
3 fraud practiced upon it by the defendants.
4 The fraud charged in the plaintiff's
5 complaint is that the defendants
6 misrepresented, one, that the Hubert
7 Lawson, Robert McAllister, and Dorothy
8 Peters contracts were genuine and
9 enforceable; two, that the defendants had
10 with regard to the Lawson, McAllister, and
11 Peters contracts fulfilled all obligations
12 and taken all actions required of them
13 under the terms of the dealer agreement;
14 three, that the defendants had sold the
15 items described to the buyers described in
16 the Lawson, McAllister, and Peters
17 contracts, and had provided plaintiff with
18 a valid, enforceable security interest in
19 the items allegedly sold; four, that at
20 the time the defendants entered into the
21 terms of the recreational vehicle dealer
22 agreement the defendants would fulfill the
23 obligations required of them under the
24 recreational vehicle dealer agreement.

25 In addition the fraud charged in the

1 complaint is that the defendant
2 suppressed, one, that the Lawson,
3 McAllister and Peters contracts separately
4 and severally were forged and were
5 otherwise fraudulent; two, that the
6 defendants had not with regard to the
7 Lawson, McAllister and Peters contracts
8 fulfilled the duties and obligations
9 required of them under the terms of the
10 recreational vehicle dealer agreement.
11 The defendants for answer to the complaint
12 say they are not guilty of the charge
13 contained therein.

14 If you are reasonably satisfied from
15 the evidence that the defendants willfully
16 misrepresented a material fact to the
17 plaintiff with the intent to induce
18 plaintiff to act thereon and plaintiff did
19 without knowledge of its falsity act upon
20 said willfulness representation to his
21 injury, then the defendants are guilty of
22 legal fraud. If you are reasonably
23 satisfied from the evidence that the
24 defendants misrepresented a material fact
25 recklessly without knowledge of the truth

1 or falsity thereof and with the intent to
2 induce plaintiff to act and that plaintiff
3 acted upon said reckless misrepresentation
4 to his injury, then the defendants are
5 guilty of legal fraud. If you are
6 reasonably satisfied from the evidence
7 that the defendants innocently or by
8 mistake misrepresented a material fact to
9 the plaintiff thereby inducing action by
10 the plaintiff to his injury, then the
11 defendant would be guilt of legal fraud.
12 If you are reasonably satisfied from the
13 evidence that the defendants concealed
14 material facts from the plaintiff and
15 without his knowledge of such material
16 facts he acted to his injury, then the
17 defendant would be guilty of legal fraud.

18 A conversion is the appropriation --
19 one, the appropriation of the personal
20 property of one person by another to its
21 own use and benefit; or, two, by
22 destruction of one's personal property by
23 another; or, three, the exercise of
24 dominion by another over personal property
25 to the exclusion or in defiance of the

1 owner's right; or, four, withholding the
2 possession of personal property from the
3 owner by another under a claim of title
4 inconsistent with the owner's title.

5 The measure of damages for the
6 conversion of personal property is the
7 value of the property as of the date of
8 the conversion or the value of the
9 property at any time between the date of
10 the conversion of the trial, whichever is
11 greater, with interest at the rate of
12 6 percent per anum from the date of
13 conversion.

14 If you are reasonably satisfied from
15 the evidence that the defendants committed
16 conduct which would amount to a felony,
17 the defendant would be guilty of a civil
18 felony. Alabama Code Section 13-8-3,
19 theft of property in the first degree,
20 provides: A, the theft of property which
21 exceeds \$2,500 in value or property of any
22 value taken from the person of another
23 constitutes theft of property in the first
24 degree. Theft of property in the first
25 degree is a Class B felony. Alabama Code

1 Section 13A-8-192, identity theft,
2 provides: A, a person commits the crime
3 of identity theft if without the
4 authorization, consent, or permission of
5 the victim, and with the intent to defraud
6 for his or her own benefit or the benefit
7 of a third person, he or she does any of
8 the following. One, obtains records or
9 accesses identifying information that
10 would assist in accessing financial
11 resources, obtaining identification
12 documents, or obtaining benefits of the
13 victim; two, obtains goods or services
14 through the use of identifying information
15 of the victim; three, attains
16 identification documents in the victim's
17 name.

18 Identity theft in which there is a
19 financial loss of greater than \$500 or the
20 defendant has previously been convicted of
21 identity theft constitutes theft in the
22 first degree. Identity theft in the first
23 degree is a Class C felony.

24 Alabama Code Section 13A-9-3, forgery
25 in the second degree, provides: A, a

1 person commits the crime of forgery in the
2 second degree if with intent to defraud he
3 falsely makes, completes or alters a
4 written instrument which is or purports to
5 be or which is calculated to become or to
6 represent if completed: One, a deed,
7 will, codicil, contract, assignment, or a
8 check, draft, note, or other commercial
9 instrument which does or may evidence,
10 create, transfer, terminate, or otherwise
11 affect a legal right, interest,
12 obligation, or status; or, two, a public
13 record or an instrument filed or required
14 or authorized by law to be filed in a
15 public office or with a public employee;
16 or, three, a written instrument officially
17 issued or created by public office, public
18 employees, or government agency.

19 B, forgery in the second degree is a
20 Class C felony. Alabama Code 13A-9-6,
21 criminal possession of forged instrument
22 in the second degree provides: A, a
23 person commits the crime of criminal
24 possession of a forged instrument in the
25 second degree if he possesses or utters

1 any forged instrument of a kind specified
2 in Section 13A-9-3 with knowledge that it
3 is forged and with intent to defraud; B,
4 criminal possession of a forged instrument
5 in the second degree is a Class C felony.

6 In the employer and employee
7 relationship the employer is held
8 responsible for his employee's
9 incompetence when notice or knowledge,
10 either actual or presumed, of such
11 unfitness has been brought to him.
12 Liability depends upon its being
13 established by substantial evidence by the
14 plaintiff with affirmative proof that such
15 incompetence was actually known by the
16 employer or that had he exercised due and
17 proper diligence he would have learned
18 that which would charge him in the law
19 with such knowledge.

20 Ladies and gentlemen of the jury, the
21 Court will now instruct you on the law of
22 damages. The burden is on the plaintiff,
23 Regions Bank, to reasonably satisfy you
24 from the evidence of the truthfulness of
25 its claims. If after consideration of all

1 the evidence in this case you are not
2 reasonably satisfied of the truthfulness
3 of the plaintiff's claims, your verdict
4 should be for the defendants. In this
5 event you would go no further. This would
6 end your deliberations.

7 On the other hand, if after a
8 consideration of all the evidence in this
9 case you are reasonably satisfied of the
10 truthfulness of the plaintiff's claims,
11 your verdict should be for the plaintiff,
12 Regions Bank. In this event it will be
13 necessary for you to arrive at an amount
14 to be awarded in the verdict form which I
15 will read to you and describe later in my
16 charge.

17 I now give you the following rules of
18 law to assist you in your deliberations in
19 arriving at an amount in the event you
20 find for the plaintiff. Compensatory or
21 actual damages are allowed and should be
22 awarded where the plaintiff reasonably
23 satisfies the jury from the evidence that
24 plaintiff has been injured or damaged as a
25 proximate result of a legally wrongful act

1 on the part of the defendants. Punitive
2 or exemplary damages are allowed to the
3 plaintiff and may be awarded in the sound
4 discretion of the jury in cases where the
5 plaintiff proves by clear and convincing
6 evidence that the defendant consciously or
7 deliberately engaged in oppression, fraud,
8 wantonness, or malice with regard to the
9 plaintiff.

10 The purpose of awarding compensatory
11 damages is to fairly and reasonably
12 compensate the injured party for the loss
13 or injuries sustained. Compensatory
14 damages are intended as money compensation
15 to the party wronged to compensate him for
16 his injury and other damages which have
17 been inflicted upon him as a proximate
18 result of the wrong complained of.

19 The purpose of awarding punitive or
20 exemplary damages is to allow money
21 recovery to the plaintiff by way of
22 punishment to the defendants and for the
23 added purpose of protecting the public by
24 deterring the defendants and others from
25 doing such wrong in the future. The

1 imposition of punitive damages is entirely
2 discretionary with the jury. Should you
3 award punitive damages, in fixing the
4 amount you must take into consideration
5 the character and degree of the wrong as
6 shown by the evidence in the case and the
7 necessity of preventing similar wrongs.
8 For a plaintiff to be entitled to recover
9 punitive damages the plaintiff must prove
10 by clear and convincing evidence that the
11 defendant consciously or deliberately
12 engaged in oppression, fraud, wantonness,
13 or malice with regard to the plaintiff.
14 Clear and convincing evidence means that
15 when weighed against evidence in
16 opposition will produce in the mind of the
17 trier of fact a firm conviction as to each
18 essential element of the claim and a high
19 probability of the correctness of the
20 conclusion. Oppression means subjecting a
21 person to cruel and unjust hardship in
22 conscious disregard of that person's
23 rights. Fraud means an intentional
24 misrepresentation, deceit, or concealment,
25 or a material fact or of a material fact

1 the concealing party had a duty to
2 disclose which was gross, oppressive, or
3 malicious, and committed with the
4 intention on the part of the defendant of
5 thereby depriving a person or entity of
6 property or legal rights or otherwise
7 causing injury. Wantonness means conduct
8 which is carried on with a reckless or
9 conscious disregard for the rights or
10 safety of others. Malice means the
11 intentional doing of a wrongful act
12 without just cause or excuse either, A,
13 with intent to injure the person or
14 property of another person or entity, or
15 under such circumstances that the law will
16 apply an evil intent.

17 Regions Bank claims that it is
18 entitled to its attorney fees, cost and
19 other litigation expenses it incurred in
20 pursuing this action against the
21 defendants. Attorneys fees, costs, and
22 other expenses of litigation may only be
23 recovered when authorized by statute, when
24 provided in a contract, or in an equitable
25 proceeding where the efforts of an

1 attorney creates a fund out of which fees
2 may be paid.

3 Regions Bank alleges that the
4 recreational vehicle dealer agreement and
5 retail installment contract and security
6 agreements, which it claims to be
7 contracts between the parties, authorizes
8 it to recover its attorneys fees, cost,
9 and other litigation expenses in the event
10 that your verdict is against the
11 defendants. If you find that the
12 recreational vehicle dealer agreement
13 and/or retail installment contract and
14 security agreement is a contract between
15 the parties, and that the defendants
16 breached the contract, you may award
17 Regions Bank the amounts of its attorneys
18 fees and other litigation cost and
19 expenses if you find that attorneys fees,
20 costs, and other litigation expenses are
21 authorized by both or either of the
22 contracts.

23 The duty owed by defendant Sunshine
24 to Regions assignor Union Planters was to
25 exercise reasonable care not to injure or

1 damage it; that is, to exercise such care
2 as a reasonably prudent person would have
3 exercised under the same or similar
4 circumstances. In awarding damages in any
5 case your verdict must not be based on
6 mere speculation or conjecture but must be
7 based upon the evidence and the just and
8 reasonable inferences shown thereby.

9 You will be the sole and exclusive
10 judges of the facts. It will be your duty
11 to attempt to reconcile the testimony of
12 all the witnesses so as to make them all
13 speak the truth if this can be done
14 reasonably. If you cannot reasonably
15 reconcile all of the testimony, it is then
16 your duty to consider the testimony with
17 the view of determining what the true
18 facts are. In so doing you may accept or
19 reject any part of the testimony of any
20 witness and accept only the testimony you
21 consider worthy of belief.

22 In determining what the true facts
23 are from the evidence you may take into
24 consideration any natural interest or bias
25 a witness may have as a result of any

1 connection with the case. You may take
2 into consideration the interest or bias a
3 witness may have -- may have shown while
4 testifying. You may take into
5 consideration the demeanor of any witness
6 as to whether the witness has apparently
7 testified frankly or evasively. You may
8 take into consideration any matter which
9 you would in your everyday affairs in
10 passing upon the truthfulness and accuracy
11 of the testimony. Weigh the testimony in
12 the light of your common observation and
13 experience and reach a verdict that will
14 be based upon the truth as you determine
15 it from all of the evidence.

16 The burden is upon the plaintiff,
17 Regions, to reasonably satisfy you by the
18 evidence of the truthfulness of the
19 matters and things claimed by them before
20 they would be entitled to recover. You
21 are the sole judges of the evidence and of
22 the credibility of the witnesses. You may
23 accept or reject any part of the testimony
24 of any witness, and you should accept only
25 the testimony you consider worthy of

1 belief. In determining the weight to be
2 accorded the testimony of any witness you
3 may consider the demeanor of the witness
4 while on the witness stand, his apparent
5 candor or evasion or the existence or
6 nonexistence of any bias or interest.

7 The language used in the dealer
8 agreement is framed by the plaintiff,
9 Regions. Ambiguous provisions of a
10 document will be construed most strongly
11 against the maker/drafter and in favor of
12 the defendant Sunshine.

13 It is your duty as jurors to discuss
14 the case with one another in an effort to
15 reach an agreement if you can do so. Each
16 of you must decide the case for yourself
17 but only after full consideration of the
18 evidence with the other members of the
19 jury. While you are discussing the case
20 do not hesitate to reexamine your own
21 opinion and change your mind if you become
22 convinced that you were wrong, but do not
23 give up your honest beliefs solely because
24 the others think differently or merely to
25 get the case over with. Remember that in

1 a very real way you are the judges, judges
2 of the facts. Your only interest is to
3 seek the truth from the evidence in the
4 case.

5 When you go to the jury room you
6 should first select one of your members to
7 act as your foreperson. The foreperson
8 will preside over your deliberations and
9 will speak for you here in court.

10 For your convenience the Court has
11 prepared for your use in this case forms
12 of verdict which will be explained to you.
13 No inferences are to be drawn by you from
14 the fact the Court has supplied you with
15 these forms or from the order in which the
16 Court reads them to you. When you have
17 reached a verdict you will select and
18 complete the form which corresponds to
19 your verdict and which is to be signed by
20 your foreperson. All 12 of you must agree
21 on any verdict which you return to court.

22 Now, there are two verdict forms and
23 you must fill out each of the two forms.
24 The first form -- and they're not
25 numbered, I'm just going to read these to

1 you in this random order -- is verdict
2 form, and it says defendant Sunshine
3 Camping Center, Inc. So this will be your
4 verdict with regard to the defendant
5 Sunshine Camping Center, Inc. The top
6 part of this form reads: If after a full
7 and fair consideration of all the evidence
8 you find for the plaintiff, then you
9 should use the following verdict form:
10 We, the jury, find for the plaintiff and
11 against the defendant Sunshine Camping
12 Center, Inc., and assess the plaintiff's
13 damages as follows. Then there's a place
14 for you to write in the amount of
15 compensatory damages and a place for you
16 to write in the amount of punitive damages
17 if you find punitive damages. You'll need
18 to write out the amount in handwritten
19 form and then numerical form so there will
20 be no misunderstanding about what that
21 amount is. If you do not find that the
22 plaintiff is entitled to punitive damages,
23 then of course you would not award
24 punitive damages. But if you do find that
25 the plaintiff is entitled to punitive

1 damages, you must have also found that the
2 plaintiff was entitled to compensatory
3 damages. In other words, you can't award
4 punitive damages without awarding
5 compensatory damages.

6 The bottom part of that form reads in
7 this way: If after a full and fair
8 consideration of all the evidence you find
9 for the defendant Sunshine Camping Center,
10 Incorporated, then you should use the
11 following verdict form: We, the jury,
12 find for the defendant Sunshine Camping
13 Center, Incorporated and against the
14 plaintiff, and then the foreperson would
15 sign below that section.

16 On the other verdict form it is
17 exactly the same with the exception that
18 it is for the defendant Jon K. Williams.
19 It reads: If after a full and fair
20 consideration of all the evidence you find
21 for the plaintiff, then you should use the
22 following verdict form: We, the jury,
23 find for the plaintiff and against the
24 defendant Jon K. Williams and assess the
25 plaintiff's damages as follows. Again

1 there's a place for you to enter
2 compensatory and punitive damages if you
3 find that the plaintiff is entitled. On
4 the bottom of the form, If after a full
5 and fair consideration of all the evidence
6 you find for the defendant Jon K.
7 Williams, then you should use the
8 following verdict form: We, the jury,
9 find for the defendant Jon K. Williams and
10 against the plaintiff and the foreperson
11 would sign that verdict.

12 At this time I'm going to allow you
13 to go back to the jury room that you've
14 been using. You are not officially
15 retired and you should not begin your
16 deliberations until the bailiff brings
17 back to you the exhibits that have been
18 entered in the case and the verdict forms.
19 That will be your signal that you can
20 begin your deliberations. In the meantime
21 perhaps you can go back and take a little
22 break and relax for just a few minutes
23 until we can get that to you. With that
24 I'll excuse the jurors to go back to the
25 jury room.

1 (The jury left the courtroom.)

2 THE COURT: Okay. The Court will
3 hear any matters that need to be brought
4 before it at this time.

5 MR. SMITH: Your Honor, we are
6 satisfied with the Court's charge with one
7 exception. We had requested pattern jury
8 charge 28.08, which was our charge number
9 six, regarding joint and several
10 liability. And in the charge conference
11 the Court indicated that it would not give
12 that charge. We respectfully except to
13 that ruling as we believe given the facts
14 of this case that it is a proper charge;
15 otherwise, we're satisfied.

16 THE COURT: All right. Thank you.
17 Mr. Shirley?

18 MR. SHIRLEY: Yes, sir. We have no
19 further objection. We reincorporate in
20 the jury charge conference our grounds for
21 objection as the basis for the lack of
22 instruction and charges that we went
23 through in the charge conference.

24 THE COURT: All right.

25 MR. SHIRLEY: Adopt that, incorporate

1 it, refile it with this motion.

2 THE COURT: At this time let's
3 address this juror issue. You'll see it's
4 four o'clock. And I would suggest to you
5 that there would be a substantial risk
6 that a verdict might not be reached this
7 evening. And this juror, Deborah Griffin,
8 has provided the Court with a doctor's
9 excuse saying -- let's see: The above
10 lady is the wife of my patient Barney
11 Griffin who is scheduled for neck disc
12 fusion surgery on May the 4, 2006. She
13 should be excused from jury duty to help
14 care for her husband.

15 MR. SMITH: Your Honor, Regions would
16 say that we have no objection to juror
17 Griffin being dismissed and being replaced
18 with juror Skeen, number 163, who was the
19 alternate and who was Regions' last strike
20 in this case.

21 THE COURT: Is there any objection to
22 the Court taking of that action?

23 MR. SHIRLEY: No, sir. Sunshine
24 Camping has no objection.

25 MR. MATTHEWS: No objection.

1 THE COURT: I will do that, then.
2 And I would like all the parties to see
3 the court reporter and review your
4 exhibits and just make a statement on the
5 record that all your exhibits are there
6 and accounted for before we send them back
7 to the jury room.

8 MR. SHIRLEY: I'm satisfied, too. I
9 always feel uneasy when I take them up
10 there to argue that that's an opportunity
11 for something to get lost.

12 MR. SMITH: I'm satisfied that both
13 of the ones offered by plaintiff and
14 offered by defendant Sunshine are present.

15 THE COURT: Ms. Griffin, right here.
16 How are you doing this afternoon?

17 MS. GRIFFIN: I'm fine.

18 THE COURT: You're Barney's wife?

19 MS. GRIFFIN: Yes.

20 THE COURT: Okay. I got your excuse
21 here from the doctor --

22 MS. GRIFFIN: Right.

23 THE COURT: -- saying that you need
24 to be available for his surgery tomorrow.

25 MS. GRIFFIN: In the morning at

1 6 o'clock.

2 THE COURT: Okay. Well, since it's
3 four o'clock and y'all haven't started
4 deliberating yet and we do have an
5 alternate juror which we use just for this
6 very purpose, I'm going to excuse you at
7 this time.

8 (Juror Griffin was excused.)

9 (Jury received the evidence at
10 4:05.)

11 (The following was heard May 4,
12 2006.)

13 THE COURT: Mr. Shirley, if you want
14 to make reference to this document, you
15 can do so.

16 MR. SMITH: If you want to offer
17 it -- both of us can offer it.

18 THE COURT: I'm going to file it.
19 I'm going to --

20 MR. SMITH: You'll make it -- okay.

21 THE COURT: -- file it in the file.

22 MR. SMITH: As long as it makes it in
23 the Court's record, Your Honor.

24 MR. SHIRLEY: It can be a Court
25 exhibit.

1 MR. SMITH: Yeah, Court's exhibit, I
2 think that'd be appropriate.

3 MR. SHIRLEY: On behalf of Sunshine
4 we have been presented a question. We
5 object to the Court answering the
6 question. The question asks for matters
7 that have already been charged to the
8 jury. Any response from the Court to the
9 jury, we find objectionable. We find it
10 objectionable because it would be an
11 invasion of the Court and an apparent
12 suggestion to the jury that the Court is
13 directing them what to do. The verdict
14 form to be entered, the Court spent time
15 telling them what they were supposed to
16 do. They have a document in there that
17 allows for a resolution of the verdict
18 that is consistent with this question, if
19 that's what they want to do. If you were
20 to answer affirmatively or negatively this
21 question that has been asked without a
22 full-blown presentation explanation of the
23 law and how they are to apply the facts to
24 the law, like you spent better than an
25 hour doing yesterday, it would unduly

1 suggest to them that the Court is
2 directing them to enter a verdict of this
3 nature.

4 In all due respect to the Court I
5 know that would not be the Court's intent
6 to make any kind of suggestion, but their
7 deliberations and their question here,
8 they have some commentaries at the bottom
9 that aren't supposed to be answered
10 either. They're just making commentaries.
11 The asterisk at the bottom, the purpose or
12 intent of what they're trying to
13 accomplish.

14 And the point that I'm further making
15 to the Court is you charged them on that.
16 And although the suggestion might be that
17 this is what the jury wants to know, the
18 truth of the matter is nobody can rule out
19 that it isn't something that just one or
20 two of the jurors want to know. And if,
21 in fact, that's what happens, we
22 respectfully submit that it would be
23 giving undue emphasis to the position as
24 the questions are indicated adverse to
25 Sunshine when they've already been told

1 all this. And Sunshine believes that the
2 best thing to do would be for the Court to
3 advise them that -- the best thing in my
4 judgment would be for the Court to advise
5 the jury that the Court believes that the
6 instructions into that question are in the
7 record and that at this juncture there
8 will be no response affirmative or
9 negatively.

10 THE COURT: Let me say something here
11 before you make your argument, Mr. Smith.
12 I think Mr. Shirley has a point in
13 reconsidering this about the verdict
14 forms. I believe that if the Court simply
15 states to the jury that a review of the
16 verdict forms themselves should answer
17 this question for them, because the
18 verdict forms say if you're reasonably
19 satisfied from the evidence that the
20 plaintiff is entitled to a verdict against
21 Sunshine, then you would render the
22 following verdict.

23 Before I give them any other
24 instructions other than that, I think it
25 might be the best thing for the Court just

1 to ask them to review the verdict forms,
2 which would actually speak for themselves.

3 MR. SMITH: Your Honor --

4 THE COURT: What do you think about
5 that?

6 MR. SMITH: Your Honor, we would say
7 first that we think given the context of
8 the question -- and the Court has
9 indicated that it will make this note page
10 with this question or questions --
11 actually they're two are written -- on a
12 Court's exhibit to the record. We think
13 under the context of the question as
14 expressed with our intent at the bottom
15 and it goes on that the Court can answer
16 that question without unduly prejudicing
17 the defendant or without giving a charge
18 that says you must find. I think the
19 Court can instruct that under the verdict
20 forms you can find for either or both or
21 neither. It's up to you to make that
22 determination and the verdict forms
23 explain that.

24 So we believe, Your Honor, that it
25 would be appropriate for the Court to

1 answer that question. The Court can
2 answer it in a neutral manner that does
3 not suggest an answer one way or -- excuse
4 me. The Court can charge or answer the
5 question in a neutral manner that does not
6 indicate any direction by the Court as to
7 how the jury should find, but that should
8 the jury find in a certain way, they may
9 do the things that they have asked about
10 in the question.

11 THE COURT: Okay.

12 MR. MATTHEWS: Judge, this may be
13 simplistic but I think the proper thing to
14 tell the jury is that they're the jury and
15 they can do whatever they want to in the
16 parameters of what you instructed them.
17 And that would -- that's a simplistic way
18 to deal with it. But basically you're
19 telling them, yes, they can do that or
20 they can do something else.

21 MR. SHIRLEY: And that's our point on
22 behalf of Sunshine, Your Honor.

23 MR. MATTHEWS: I think that's the
24 fair way to do it, Judge, is say you're
25 the jury, you can do whatever you want to

1 do either way and your -- and you've got
2 forms back there to take care of it. I've
3 had this come up before in another case,
4 same exact.

5 THE COURT: Okay. If you will, let's
6 just bring the -- well, I'll tell you
7 what.

8 MR. SMITH: Can we --

9 MR. MATTHEWS: You can go back there,
10 Judge.

11 MR. SMITH: You can go back there,
12 Judge. I think you can.

13 MR. SHIRLEY: If you --

14 THE COURT: With the court reporter?

15 MR. SMITH: Sure, sure.

16 MR. SHIRLEY: That'd be fine.

17 MR. SMITH: I think that'd be fine.

18 MR. SHIRLEY: We don't have any
19 objection, with this reservation. I
20 guess -- do we know what you're gonna say?

21 THE COURT: Well, I'll let y'all
22 stand right there in the hall and listen
23 to it.

24 (The following was heard in the
25 jury room with the attorneys

1 present.)

2 THE COURT: Okay. Y'all may be
3 seated if you want to. You might want to
4 stand up. You might be tired of sitting
5 down, I don't know. Okay. I have
6 received your questions and I have
7 reviewed them. The first question: Can
8 we award compensatory damages against
9 Sunshine Camping, Inc., in addition to can
10 we award compensatory and punitive damages
11 versus Sunshine Camping Center defendants
12 Jon K. Williams.

13 You have the verdict forms here that
14 I have reviewed with you. And the verdict
15 form states that if after a full and fair
16 consideration of all the evidence you find
17 for the plaintiff, which is Regions Bank,
18 then you should use the following verdict
19 form. Then the verdict form provides:
20 We, the jury, find for the plaintiff and
21 against the defendant Sunshine Camping
22 Center, Inc. and assess plaintiff's
23 damages as follows. And then there's a
24 place for you to fill in compensatory
25 damage and punitive damages.

1 Now, my instruction to you regarding
2 that was that you cannot award punitive
3 damages without awarding compensatory
4 damages. You can based upon your findings
5 as to whether or not punitive damages
6 should be awarded, award compensatory
7 damages and not punitive damages, but you
8 can't do the reverse.

9 And then the same is true with regard
10 to Jon Williams. The verdict form reads
11 the same. If after a full and fair
12 consideration of all the evidence you find
13 for the plaintiff against Jon K. Williams,
14 then you should use the following verdict
15 form: We, the jury, find for the
16 plaintiff against the defendant Jon K.
17 Williams and assess the plaintiff's
18 damages as follows. And then you would
19 determine what damages you're going to
20 assess against defendant Jon K. Williams.
21 And the same explanation, a place there.
22 You can't award punitive without awarding
23 compensatory. You can award compensatory
24 without awarding punitive if that is your
25 decision and your finding.

1 And of course you can also if you
2 find that that the defendant -- if you
3 find after consideration -- full and fair
4 consideration of all the evidence you find
5 for the defendant Jon K. Williams, then
6 you should use the following verdict form:
7 We, the jury, find for the defendant Jon
8 K. Williams. The same would be true with
9 regard to Sunshine Camping Center. If
10 after a full and fair consideration of all
11 the evidence you find for the defendant
12 Sunshine Camping Center, Inc., then you
13 should use the following verdict form:
14 We, the jury, find for the defendant
15 Sunshine Camping Center, Inc., against the
16 plaintiff.

17 I hope that adequately answers your
18 question. I believe that's, you know, the
19 fairest answer that I can give you in
20 fairness to all the parties' concerns. So
21 I'm gonna ask you to continue your
22 deliberation, reviewing the verdict forms
23 if you need to. And I believe they're
24 really self-explanatory as far as the
25 questions that you've asked the Court

1 about.

2 MS. COLLIER: One more question?

3 THE COURT: Well --

4 MS. COLLIER: So either --

5 THE COURT: Go ahead and ask your
6 question.

7 MS. COLLIER: -- or, not both?

8 THE COURT: Yes, you can award the
9 damages against both defendants if that's
10 your finding.

11 MS. COLLIER: Okay. Thank you.

12 (The following was heard in open
13 court.)

14 (The jury entered the
15 courtroom.)

16 THE COURT: Madam foreperson, has the
17 jury reached a verdict?

18 MS. COLLIER: We have, Your Honor.

19 THE COURT: I'm gonna ask you, if you
20 will, just to fold it in half and give it
21 to the bailiff there and let him bring it
22 to me, please. Okay. Now, we only have
23 one verdict form here. We're gonna need
24 the other verdict form as well. Have you
25 reached a verdict with regard to the

1 defendant Jon Williams?

2 MS. COLLIER: We did. All of our
3 judgment will be on that piece of paper.
4 Do I need to sign the second one?

5 THE COURT: Yes, ma'am. I'm going to
6 excuse y'all to go back into the jury
7 room. There has to be a verdict for each
8 defendant.

9 MS. COLLIER: There does? Okay.

10 THE COURT: And so I'm going to
11 excuse y'all at this time to go back to
12 the jury room, and I'm going to give you
13 this verdict form as well.

14 (The jury left the courtroom.)

15 (Break in the proceedings.)

16 (The jury entered the
17 courtroom.)

18 THE COURT: Okay. Madam foreperson,
19 if you would give the bailiff there your
20 verdicts. Okay. I'll now read the
21 verdicts that have been handed to me.
22 First the verdict form Defendant Sunshine
23 Camping Center, Incorporated. We, the
24 jury, find for the plaintiff and against
25 the defendant Sunshine Camping Center,

1 Incorporated and assess the plaintiff's
2 damages as follows: Compensatory
3 \$143,000.79; punitive damages, nothing is
4 entered there. Signed by the foreperson
5 Tammy Parker Collier.

6 On the verdict form for defendant Jon
7 K. Williams: We, the jury, find for the
8 plaintiff and against the defendant Jon K.
9 Williams and assess the plaintiff's
10 damages as follows: \$96,894.32; punitive,
11 no entry made there. Signed by Tammy
12 Parker Collier. Ms. Collier, is this --
13 are these verdicts the verdicts of the
14 jury?

15 MS. COLLIER: Yes, Your Honor.

16 THE COURT: Okay. At this time I
17 would like to express the Court's thanks
18 and appreciation for your service this
19 week. I know it's been a long week. For
20 jurors to have to serve, you know,
21 three-and-a-half days, that's a pretty
22 long term of service here in Dale County.
23 Most cases don't last quite that long, so
24 I know it's been perhaps an inconvenience
25 and a sacrifice for all of you to be away

1 from your homes, your families, and your
2 work for this period of time. But it is a
3 tremendous service that you have given
4 Dale County and the citizens of this
5 community in rendering this service as
6 jurors in this case.

7 Ms. Bludsworth will have a check, a
8 small token of the State's appreciation
9 for your service. She'll be getting that
10 out in the mail to you probably tomorrow.
11 So with that I will excuse you at this
12 time to go about your business. Thank you
13 so much.

14 (Jury dismissed.)

15 THE COURT: With that I will have the
16 file in my office here. The verdict forms
17 will be available for y'all to make a copy
18 of and to get anything else out of the
19 file that you might want at this time.
20 And are there any other matters need to be
21 brought before the Court at this time?

22 MR. SMITH: Regions has nothing
23 further, Your Honor.

24 THE COURT: Thank y'all.

25 (End of Proceedings.)

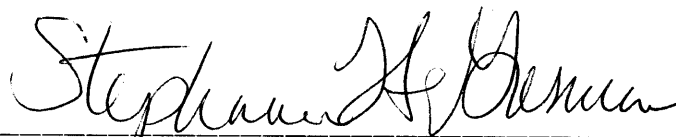
REPORTER'S CERTIFICATE

STATE OF ALABAMA

DALE COUNTY

I, Stephanie H. German, Court Reporter and
Notary Public, State at Large, do hereby certify
that the foregoing transcript is a true and correct
reproduction of my machine shorthand notes taken on
said occasion.

WITNESS my hand this the 24th day of July,
2006.

A handwritten signature in cursive script, reading "Stephanie H. German".

STEPHANIE H. GERMAN - COURT REPORTER